

HISTORY OF THE SECOND WORLD WAR

EVERY THURSDAY VOLUME 8 NUMBER 7 3/6

TRIALS AT NUREMBERG

HERMANN GÖRING Reich Marshal
and Commander - in - Chief of
the Luftwaffe (52)

RUDOLF HESS Deputy Führer
until 1941 (52)

JOACHIM VON RIBBENTROP Foreign
Minister (53)

ALFRED ROSENBERG Minister for
the Eastern Occupied Territories
(53)

WILHELM KEITEL Field Marshal
and Chief of the High Command
of the Armed Forces (63)

ERNST KALTENBRUNNER Chief of
Security Police (43)

Guilty on
four Counts

DEATH

Guilty on
I and II

LIFE IMPRISONMENT

Guilty on
four Counts

DEATH

Guilty on
four Counts

DEATH

Guilty on
four Counts

DEATH

Guilty on
III and IV

DEATH

Guilty on

HISTORY OF THE SECOND WORLD WAR

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Telford Taylor

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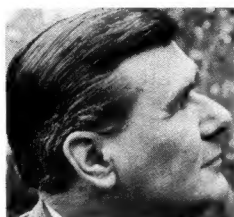
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Barrie Pitt

The spectacle of Germany's deposed leaders standing trial for their lives provided the postwar world with one of its greatest talking points. Although the trials were not unique (as Telford Taylor points out, there have been trials after other wars of men who transgressed the rules of war) they were on a hitherto unprecedented scale and meted out correspondingly comprehensive sentences for crimes of that nature. But it is the long-term benefits rather than the spectacle with which we are concerned and which require examination.

One benefit (perhaps of questionable advantage to the world in general) was the mass of documentation and evidence thrown up by the trials which has been of enormous benefit to historians, giving them access to data which otherwise might have been unavailable for decades. Hence the writing of contemporary history has been more enlightened (as several contributors to this History would be the first to confess) and the process of learning about the causes of war has been more speedily disseminated—along with the faint chance that this knowledge can be harnessed to the cause of the preservation of peace.

As acts of justice, however, the trials stand possibly on weak ground, for if they were intended as straightforward acts of revenge, this hardly represents a constructive aim; and if nothing but automatic punishment for offences committed they merely resolve themselves into symbolic exercises, of interest only to historians and students of jurisprudence. Only if the trials can be shown to have imposed a genuine deterrent on future generations of political and military leaders, will they have really fulfilled a worthwhile aim—and of this we have reason to doubt, if only because crimes of political violence since the war have shown no marked rate of decline. Certainly it seems that the ability of the United Nations to make and enforce international law is no better than that of its predecessor.

But there has to be a beginning for everything, and the Nuremberg Trials and their subsidiaries may well be the start of a new system of international law which, several centuries hence, will be quoted as a precedent for the application of a working international justice.

And if nothing better transpires, then at least one tiny technological advantage was achieved: these trials helped develop the system of linguistic interpretation that may perhaps help to future understanding between nations.

THE EDITOR

Imperial War Museum, Lambeth Road, SE1

The History of the Second World War is being produced in active co-operation with the Imperial War Museum, which has provided expert advice and extensive research facilities. The Imperial War Museum illustrates and records all aspects of the world wars of 1914-1918 and 1939-1945 and the other operations in which the forces of the British Commonwealth have been engaged since August 1914. It makes accessible to the public information of all kinds, related not only to actual campaigns and operations but also to the impact of war on the social, political, and economic life of the people of all countries, belligerent and neutral. In the public exhibition galleries are to be seen weapons and equipment of every kind, including complete aircraft, field guns, and armoured combat vehicles of both wars, as well as large collections of models, uniforms, decorations, insignia, and personal relics of the famous and unknown.

The Imperial War Museum Cinema

By visiting the cinema of the Imperial War Museum one has an excellent opportunity to see something of the original newsreels with which the war was recorded. Recent programmes have included one devoted to the *Allied Invasion of Western Europe, 1944*, another to the German invasion of France and the Low Countries in 1940, and two on the war in the Far East. From Monday to Friday inclusive, the daily performance is at 12 noon; on Saturday and Sunday the time is 2.45 pm. Occasionally there are extra memorial programmes.

The Nuremberg Trial

War Crimes and Tribunals

Roger Manvell and Heinrich Fraenkel

The Nuremberg Trial was designed to show up the evils of the Nazi régime and the men who perpetrated the worst crimes of the régime. But the trial dragged on too long and interest began to wane; occasionally the proceedings were enlivened by a particularly important piece of evidence.

Inevitably the true characters of the accused emerged, weak, aloof, defiant, or repentant when the outcome of the trial became obvious. Eventually sentence was passed and executed. Only Göring evaded the sentence passed on him by committing suicide.

In November 1945, a bare six months after Hitler's suicide and the capitulation of Germany, Nuremberg added a new phase to its long history. The Allies selected it as the place to stage their public examination and exposure of certain leading representatives of the Nazi hierarchy and armed forces who had fought on Hitler's behalf in a manner which had led to criminal acts in war.

Everyone concerned was aware that the International Military Tribunal had to be a showpiece as well as a showdown. Consequently the Court of Justice at Nuremberg was fitted out to serve the technical needs of the world press, radio, and film coverage; only television remained as yet unavailable. The courtroom was wired for simultaneous translation into the four languages involved – English, German, French, and Russian.

From May 1944 to the end of the trial and the execution of those found guilty and sentenced to death in October 1946, the prisoners were in the care of Colonel Andrus, US Army. Guarding and housing the prisoners was a responsibility taken over by the Americans; they bore the cost of this, as they did of the trial itself, though it was intended to pass the charge on eventually to Germany under the heading of reparations. Britain, Russia, and France merely met the overheads of their own judges and teams of prosecutors, who were to be engaged on this demanding task for the best part of a year.

In addition to interrogation, the prisoners were subject to psychological investigation. Dr Douglas M. Kelley examined them initially; his place was taken eventually by Dr G. M. Gilbert and others; both Dr Kelley and Dr Gilbert have left records of their experiences with the prisoners whom they came to know intimately before and during the trial. Papen was particularly scornful of these 'gentlemen who called themselves psychiatrists' and who tried to give him ink-blot intelligence tests as if he were a schoolchild.

Thirty days before the trial each defendant received his copy of a statement in German of some 24,000 words which was the first indication of the charges they would have to answer. Signed in October in Berlin, it detailed the Prosecution's outline of these charges under the four main counts into which the case had been divided:

- The Common Plan or Conspiracy (including breaking treaties, planning wars of aggression, the persecution and murder of helpless people);
- Crimes against Peace
- War Crimes
- Crimes against Humanity.

The distinction was a very broad one, and as the trial developed the categories seemed increasingly to overlap each other. The prisoners were allowed to choose their German defence counsel from a list of acceptable men drawn up under Allied supervision.

From first to last Göring regarded himself as the protagonist. He had been recognised as the 'second man' in Germany since before the war. To Dr Kelley he had said: 'I know I shall hang. You know I shall hang. I am ready. But I am determined to go down in German history as a great man. If I cannot convince the Court, I shall at least convince the German people that all I did was done for the Greater German Reich. In 50 or 60 years there will be statues of Hermann Göring all over Germany.'

Throughout his confinement Göring

proved highly co-operative, and for the most part cynically cheerful until the prolonged burden of the trial finally wore him down. His main fault was his ceaseless attempt to dominate the other prisoners once he gained access to them both inside and outside the courtroom during the hearing. He tried to achieve this more by sheer force of personality than by argument. Colonel Andrus claimed to have taken him 'off his dope and made a man of him'. As a result, by the time Göring was ready to face trial before the cameras and microphones he was 80 pounds lighter, clear-headed, and fighting fit.

This was not true of all the prisoners. Of the chief defendants, Schacht, Neurath, and Papen were determined to keep as aloof as possible, while the service chiefs, Raeder, Dönitz, Keitel, and Jodl, felt at first that they should never have been tried at all, their basic defence being that they were under orders and had to obey them. 'None of these indictment counts concern me in the least,' Gilbert alleges Dönitz to have said. Papen claims that he thought he was to have an individual trial, not be lined up with the others in the dock. 'I imagined it would be easy to prove my complete innocence . . . I wrote a cheerful letter to my wife, saying that I expected the proceedings to last two or three days and that I would be with her by the end of November.' Schacht, who like Papen was indicted under counts one and two only, wrote subsequently: 'From that moment I knew that, provided judgement were given according to law and justice and not according to hatred and passion, the whole of the Nuremberg proceedings must result in my being acquitted.' But such relative equanimity was denied the more maladjusted defendants. Frank, the sadistic former governor-general of occupied Poland, whose fearful diaries kept during that time were to form a major document submitted in evidence by the Prosecution, collapsed into a state of religious mania; he alternately wept and prayed in his cell. Baldur von Schirach, the Hitler Jugend leader, was also repentant. Hess, who seemed to be suffering from amnesia, often appeared oblivious of what was going on around him. Speer, more than anyone, remained level-headed and responsible, and was in effect prepared to see the trial from the Tribunal's standpoint. 'The trial is necessary,' he said to Gilbert. 'There is a common responsibility for such horrible crimes even in an authoritarian system.'

So, on November 20 the defendants filed into their places in the dock; the film cameras began to whirl, and the microphones went live. The civilian prisoners were dressed in sober suits given them each morning to put on like stage costumes, together with neckties and shoelaces, only to have these things withdrawn when they returned to their cells. Colonel Andrus was responsible for seeing there were no more deaths by suicide. Dr Ley, who should have been among the defendants, hanged himself before the trial with a towel attached to the cistern-lever of the lavatory in his cell.

Given the very short time at the disposal of counsel, it was remarkable how much information was unearthed, and one of the difficulties of this most difficult operation was to keep the various prosecuting counsel adequately briefed to deal satisfactorily with such quick-witted and evasive defendants as Göring, Jodl, or Schacht, whose detailed knowledge of what had actually happened during the period of the régime

naturally far exceeded that of the various Allied counsel cross-examining them. Counsel were therefore very dependent on presenting documents held to be incriminating.

Spearhead for other trials

The Nuremberg Trial was seen from the first to be the spearhead for other, more specialised trials and hearings which were to be conducted by the individual occupying powers in their particular zones. The United Nations War Crimes Commission had compiled initial lists of men and women who were already known for their guilt, and who were therefore on the 'wanted' list. The importance of the Nuremberg Trial was that it stood in the forefront of a vast investigation into Nazi activities conducted as near as possible on a national scale. The initial part of this work had actually preceded the Nuremberg Trial. We have attempted to summarise this immense activity, which was an intrinsic part of the international act of justice of which the Nuremberg Trial was the apex, in our book, *The Incomparable Crime*:

The formidable problem of de-Nazification was treated by each of the Allied nations in her own fashion. They faced an impossible task, if only because the investigations had to be initiated and controlled by foreigners who spoke a different language and had not lived in Germany during the Nazi régime; they knew nothing, and often cared far less, about the different degrees of collaboration that had existed between the people, the Party and the State. The Russians adopted a wholly arbitrary approach; the former prominent Nazis who they believed were needed in public life, they retained both in civil and industrial administration, keeping them under the strictest observation and making them toe the necessary line in Communist ideology; those whom they did not want, or suspected of war crimes, they dealt with summarily according to their own system of justice, which at first was barely formalised vengeance. This accounts for the very large figures for those tried and sentenced in the areas under Soviet control, whereas in the Western zones the de-Nazification tribunals functioned as a preliminary phase to the trials of those who emerged as the more serious offenders. The French adopted an attitude which was in some respects similar to the Russians, retaining those recognised Nazis whom they needed in office. They too behaved in an arbitrary manner, keeping, in certain cases, their prisoners in custody without trial for periods lasting up to ten years.

The Americans and the British at least tried to be punctilious in the face of an overwhelming task. In the American Zone everyone over 18 had to complete a questionnaire about his past activities; 500 tribunals were set up on which a staff of 22,000 investigators and aides examined 3,000,000 charges which resulted in 900,000 sentences. In the British Zone during the first six months of occupation, 84,000 were interned, 50,000 dismissed from office and 12,000 withdrawn from employment. By January 1946 the realities of the problem made it only commonsense to set up German advisory committees to bring some direct knowledge and experience to the task. In October 1947 these responsibilities were delegated entirely to the provincial governments, which continued to follow the British and American pattern for categorizing those examined into major offenders, offenders, lesser offenders, fol-



Black Star



Above: The Nuremberg district prison, where twenty Nazi war criminals were housed during their trial.
 Left: A cell in Nuremberg prison. Right: The prisoners were watched day and night.
 Below: The spiral stairs of the prison were netted in order to deter attempts at suicide



Black Star



The Nazi leaders on trial in November 1945. Front row, left to right: Göring, Hess, Ribbentrop, Keitel, Rosenberg, Frank, Frick, Streicher,

Funk, and Schacht. Back row, left to right: Dönitz, Raeder, Schirach, Sauckel, Jodl, von Papen, Seyss-Inquart, Speer, von Neurath, and Fritzsche





lowers and those who were exonerated. By this time—some two and a half years after the conclusion of the war—the British tribunals had themselves examined around 2,000,000 Germans, removing 344,000 from positions of responsibility and putting over 500,000 under some form of restriction. Those who felt aggrieved could, if they wished, appeal; many did, and won. Of those interned 26,659 cases were heard between 1946 and the end of the Allied trials in 1948.

The Nuremberg trial must be seen, therefore, as part of a great network of attempted 'justice', which ranged from summary retribution exacted almost immediately hostilities had ceased to the most prolonged and public forms of examination, in which the defendants were given every opportunity to reply at length on points of detail.

The first day of the trial was occupied in reading the document already held by the prisoners and outlining the charges to be put against them. Papen has described his first reaction from the defendant's point of view:

The defendants sat in two rows against one of the longer walls, flanked by American military police in their polished white helmets. In front of us, three rows of benches accommodated our defence counsel. To our left, along one of the shorter walls, sat the judges; opposite us, at four long tables, the prosecution representatives of the four nations. At the other end was the press gallery, with up to two hundred journalists and cameramen from every country in the world, and above them the spectators' gallery. This presented an endless kaleidoscope of uniforms. The only nation missing were the Germans, whom one would have thought to be those most affected by the proceedings.

On the second day, November 21, the President, Lord Justice Lawrence, called on each of the defendants to answer the charges brought against him—guilty or not guilty. Each was to speak into the dock microphone as his name was called. Göring, in his grey and rankless uniform, was the first; he edged forward, carrying some notes in his hand, and began to speak: 'Before I answer the question of the Court—' The President interrupted at once, calling him to order with a beat of his gavel, repeating that he could only at this stage plead guilty or not guilty. Göring, thwarted when he most wanted to show his strength, growled into the microphone, 'I declare myself in the sense of the indictment not guilty.' Others later took up his phrase, among them Ribbentrop, Papen, Speer, Streicher, and Schacht simply declared themselves not guilty. Hess, amid some nervous laughter in court, just said: 'No'. At the end of the declarations, Göring twice rose from his seat in the prisoners' dock to address the Tribunal, but the President firmly suppressed him, asserting his authority with tact and diplomacy from the very first as head of the international team of judges. He was never to miss a sitting of this judicially most complex trial, which was to last ten months, and for which there was no precedent to which he and his fellow judges could turn for guidance.

The prosecution begins

The next phase of the trial, the case for the prosecution, extended from November 1945 to March 1946. During this period, except through the intervention of their counsels, the defendants were unable to address the

Tribunal. It was a period of severe restraint for Göring in particular—five months of condemnation to silence in public. In court he did what he could in audible comments to the other defendants and mimicry to make his masterful personality felt. He sensed the presence of the cameras; he could at least be seen if he could not be generally heard. He would gesticulate, turn, and whisper blatantly to his neighbours, scowl, grin, or laugh, according to the impression he wanted to make. Off-stage he poured out his comments, half jovial, half cynical, to his fellow prisoners and to Dr Gilbert. He refused the ministrations of the prison chaplain, though he agreed to attend the chapel services because, as he put it, 'as ranking man of the group, if I attend the others will follow suit'. 'Prayers, hell,' Gilbert reports him as saying. 'It's just a chance to get out of this damn cell for half an hour.' As for the trial itself, his comment was, 'The victor will always be the judge, and the vanquished the accused.'

With Mr Justice Jackson of the USA opening for the prosecution, the prolonged tale of Nazi crime began gradually to unfold. Counsel followed counsel, each presenting his section of the history of the régime in the light of an aggressive conspiracy—the rise of the Nazi Party to power, the consolidation of dictatorship through the oppression of free, independent organisations and parties, the persecution of the Jews, the subjection of the nation to propaganda designed to prepare the German people for war, and the planning of aggression against successive countries. For example, the captured verbatim record of Göring's brutal telephone calls to Seyss-Inquart and others in Vienna on the night of the *Anschluss* was quoted at length.

On November 29 the appalling American compilation film on the state of the concentration camps at the time of their liberation was screened, a senior film technician taking oath that the images had 'not been retouched, distorted, or otherwise altered'; 6,000 feet (one hour) from a total of 80,000 feet (over 13 hours) of this material had been edited for exhibition to the court.

The prisoners, who were kept illuminated during the screening, reacted sharply. Here is part of Gilbert's detailed description of their reactions noted at the time:

Schacht objects . . . turns away. . . . Fritzsche already looks pale and sits aghast as it starts with scenes of prisoners burned alive in a barn . . . Keitel wipes brow, takes off headphones . . . Hess glares at screen. . . . Neurath has head bowed, doesn't look . . . Funk covers his eyes, looks as if he is in agony. . . . Göring keeps leaning on balustrade, not watching most of the time. . . . Funk swallows hard, blinks eyes, trying to stifle tears. . . . Funk now in tears. . . . Seyss-Inquart stoic throughout. . . . Speer looks very sad, swallows hard . . . Raeder watches without budging . . . Papen sits with hand over brow, looking down, has not looked at screen yet. . . . Schirach, watching intently, gasps, whispers to Sauckel. . . . Funk crying now. . . . Dönitz has head bowed, no longer watching. . . . as human skin lampshade is shown, Streicher says, 'I don't believe that'. . . . Fritzsche, pale, biting lips, really seems in agony. . . . Frick shakes his head incredulously at speech of female doctor describing treatment and experiments on female prisoners at Belsen. . . . Funk, crying bitterly, claps hand over mouth as women's naked corpses are thrown into pit.

Once off-stage, the reactions were equally emotional. Fritzsche, Funk, and Frank wept; others retained their self-control, either because, like Streicher, they were unmoved, or, like Speer, because they were resolved to retain what dignity they could. Most, like Dönitz, Raeder, and Keitel, in their varying ways made it clear that they denied all knowledge or moral responsibility for such dreadful crimes committed, as they claimed, entirely outside their jurisdiction.

On November 30 came the first of the dramatic interventions by prominent Germans who had evidence to give, either for the prosecution or the defence, which uncovered the more extraordinary or secret facts in the history of the régime. These were the revelations made by Major-General Erwin Lahousen, formerly of German Military Intelligence, that the centre of army resistance to Hitler had for a considerable time been located in Admiral Canaris's intelligence department, the *Abwehr*. This came as a shock to the defendants and to many in court, who knew little or nothing of the organised resistance movement in Germany, apart from its sudden manifest activity in the abortive attempt on Hitler's life in July 1944. Lahousen showed how Canaris chose the leaders of the various sections of the *Abwehr*, of whom he himself was one, because they shared his hostile view of Hitler. Lahousen said:

'Canaris was a personality of pure intellect. We relied on his inner, very unique and complicated nature, for this reason. He hated violence and hated and abominated therefore Hitler, his system, and particularly his methods.'

Lahousen's extremely informative evidence about Canaris's resistance to the prosecution of the war by several of the men in the dock was eventually interrupted by another dramatic interlude—the argument whether Hess's apparent amnesia rendered him unfit to plead. Normally he sat in court reading novels, or staring round absently with a smile, as if he merely felt ironic about what was taking place around him. Hess's counsel maintained that he was unfit to stand trial. Suddenly, however, the wind was taken out of his sails when Hess obtained the President's permission to speak and made the following astonishing declaration:

I would like to make the following declaration before the Tribunal. . . . Henceforth my memory will again respond to the outside world. The reasons why I simulated loss of memory were tactical. The fact is that it is only my ability to concentrate that is somewhat reduced. However, my capacity to follow the trial, to defend myself, to put questions to witnesses or even to answer questions, is not being affected. I emphasise that I bear the full responsibility for everything that I have done or signed as signatory or co-signatory.

The court was adjourned amid great excitement, and Hess's defence counsel was completely nonplussed. Göring, off-stage, treated the whole thing as an immense joke, but, according to Gilbert, seemed to resent the limelight being so suddenly switched from himself to Hess, who was delighted to have fooled everyone so successfully.

Lahousen's important evidence had been momentarily side-stepped. But he went on later to give damning information about Nazi conduct in Poland, the exterminations which were ordered, the mass murder by

Himmler's *Einsatzgruppen* Action Groups in Russia, and the killing of prisoners. He accused Keitel of bringing pressure to bear on Canaris to have both Weygand and Giraud assassinated. Keitel was to deny this strongly later.

Gathering momentum

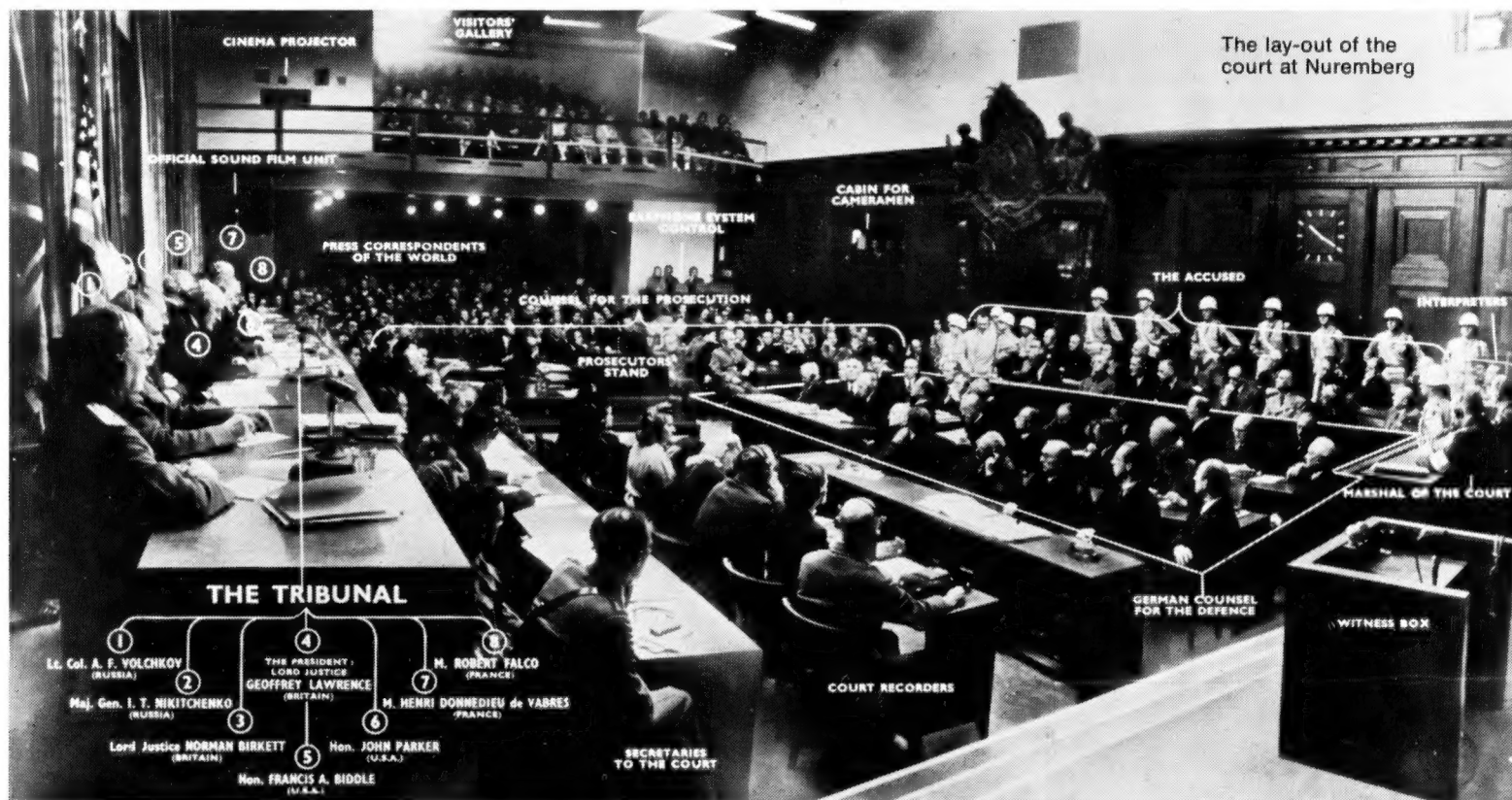
During the early part of December the team of prosecuting counsel built up, with the help of numerous quotations from captured documents and films, the charges primarily under counts one and two. Hitler's plans for war were revealed in detail, more especially Plan Barbarossa against the Soviet Union. When, on December 11, a lengthy specially compiled film about the history of the régime was shown, Gilbert noted how the spirits of certain defendants rose to these recollections of Nazi power. Sitting in the dock, Göring laughed out loud, and even Hess grinned; but Ribbentrop wept during the luncheon interval, which the prisoners were allowed to spend

prisoners. Their task was to put the best possible interpretation on the mass of documentary evidence produced against the defendants during the endless months of the trial. The skill of the prosecuting counsel also varied greatly—some were less informed than others about the details of history of the Nazi régime, and were on more than one occasion to be outmanoeuvred by the sharp wit and expertise of Göring. The most devastating cross-examiner proved to be British Deputy Chief Prosecutor, Sir David Maxwell Fyfe; the most impassioned was the American Chief of Counsel, Mr Justice Robert H. Jackson, who became at times moved to outright anger and the display of emotion. The French and Russian counsel were more particularly concerned to produce evidence relating to the effect of Nazi aggression and occupation in their own territories. The case for the prosecution amounted in all to some 2,000,000 words and several hours of film footage, while the full text of the documents quoted or part-quoted

1938. Days were to be spent exposing in detail the dire experiences of particular countries: Czechoslovakia, Poland, France, the Low Countries, Yugoslavia, and the USSR. The machinery of Party and State was examined, together with the planned aggression which led to the occupation of territory after territory. The economic 'looting' of these countries, the theft not only of food, raw materials, and capital goods but also of works of art, was revealed in detail.

On February 11 the Russians produced the former Field-Marshal Friedrich Paulus, once commander of the German Army in Stalingrad, as their prime witness of Hitler's aggression against the Soviet Union.

The British prosecutors were also much concerned about the murder of 50 RAF officers following an escape attempt from POW camp Stalag Luft III at Sagan in Silesia, and returned to this again and again. Evidence grew about the concentration camps as the ultimate sanction of Nazi repression—the 'Night and Fog' decrees



together. Göring in his cell said, *'They don't have to show films and read documents to prove that we rearmed for war. Of course we rearmed! Why, I rearmed Germany until we bristled! . . . Of course I wanted to make Germany great! If it could be done peacefully, all well and good; if not, that was fine too!'*

By mid-December the trial had begun to settle into a certain routine to which everyone—defendants, counsel, administrative and technical staff, security forces and press—were all becoming adjusted. For the Germans—defendants, defence counsel and a limited number of press and general public—it was an education in Anglo-Saxon law procedure. For the presiding judges, in particular Lord Justice Lawrence, it was a matter of maintaining an absolute intellectual grasp and juridical control of what went on, while at the same time permitting reasonable latitude as the defence counsel felt their way towards establishing every legitimate right for the

in court was to fill a series of 19 large volumes when finally published. There could be no doubt at all that the strain began to tell on everyone as the weeks and months went by and the attention of the press waned except when some unexpected event occurred or some exceptional witness arrived to stir the court to renewed curiosity or tension.

During the course of this presentation, many documents which were to become 'classics' of Nazism were exposed for the first time. Among these, for example, were the records of Himmler's secret orders to the SS and his speeches given to closed audiences of SS or army officers on Nazi policy for the enslavement or extermination of unwanted people. Another document was Frank's private diary, so frequently quoted at the trial, which he had himself surrendered to the Americans. Yet another was the minutes of the notorious meeting at which Göring presided to discuss the confiscation of Jewish property and other forms of persecution after the pogrom in November

which led to the disappearance of people without any trace, the so-called medical experiments in the camps, the mass genocide of Jews and Slavs, the punitive extermination of the Jews enclosed in the great Warsaw ghetto.

Witnesses were called who had been among the victims in oppressed territories or in the camps themselves; lengthy affidavits from those unable to appear were quoted; this evidence was presented in particular by the French and the Russians during February. They also revealed some of the secrets of Auschwitz—the correspondence concerning the construction of the crematoria, the use of gas-chambers for mass-extermination, the economic exploitation of human bones and hair, and the gold extracted from the teeth of the corpses. But when General Rudenko, Chief Prosecutor from the Soviet Union, was speaking, both Göring and Hess took off their earphones in disgust, and Göring refused to look at the appalling images in the Russian

atrocities film presented in February; he yawned ostentatiously and read a book. He took little or no notice of the Russian evidence.

Atrocities in Russia

Witnesses were called to give their own direct account of what had taken place. On January 3, for example, Otto Ohlendorf came to testify to the crimes of genocide in which he had personally taken part as the commander of an SS Action Group which accompanied the German army during the invasion of Russia. He spoke of the way the Jews had been rounded up by the Action Groups and killed at the express orders of Himmler and with the full knowledge of the Army High Command. The court listened in tense silence to Ohlendorf's statements:

Ohlendorf: *After the registration the Jews were collected at a certain place. From there they were later led to the place of execution. The execution was carried out in a military fashion.*

Colonel Amen (USA): *In what way were they transported to the place of execution?*

Ohlendorf: *They were transported to the execution place in a wagon—always as many as could be executed immediately. In this way the attempt was made to keep the span of time in which the victims knew what was about to happen to them until the time of their actual execution as short as possible.*

Amen: *Was that your idea?*

Ohlendorf: Yes.

Amen: *And after they were shot what was done with the bodies?*

Ohlendorf: *The bodies were buried in the trenches.*

Amen: *What determination, if any, was made as to whether the persons were actually dead?*

Ohlendorf: *The unit leaders had the order to watch out for that and to administer the coup de grace themselves if necessary.*

Amen: *And who would do that?*

Ohlendorf: *Either the unit leader or somebody designated by him.*

Amen: *In what positions were the victims shot?*

Ohlendorf: *Standing or kneeling.*

Then, during the cross-examination of Ohlendorf by representatives of the defence counsel, a bombshell was quite unexpectedly dropped on the insistence of Speer:

Counsel: *One more question which you might perhaps know about. Do you know if the defendant Speer prepared an attempt on Hitler's life in the middle of February of this year?*

Ohlendorf: No.

Counsel: *Do you know that Speer undertook to turn Himmler over to the Allies so that he could be called to account and possibly clear others who were innocent?*

Ohlendorf: No...

Counsel: *It is known to you that the circle of plotters of the 20th July had also planned to keep the defendant Speer as head of his Ministry?*

Ohlendorf: Yes...

Counsel: *Witness, do you believe that this intention of the plotters of the 20th July was due to the fact that the defendant Speer, in view of his activities, was considered not only in those circles, but even elsewhere, merely as an expert and not as a politician?*

Ohlendorf: *The question is very hard to answer.*

Speer had given no hint to Göring or any of the other defendants that he was going

to promote these admissions, the facts of his defection from Hitler being quite unknown to them. On the same day Dieter Wisliceny, a member of Himmler's administrative staff, revealed his discussions with Eichmann concerning the 'final solution', the genocide of the Jews:

Eichmann told me he could show me this order in writing if it would soothe my conscience. He took a small volume of documents from his safe, turned over the pages and showed me a letter from Himmler to the Chief of the Security Police and the SD [SS Intelligence]. The gist of the letter was about as follows: The Führer had ordered the 'final solution' of the Jewish question; the Chief of the Security Police and the SD, and the Inspector of the Concentration Camps were entrusted with carrying out this so-called 'final solution'. All Jewish men and women who were able to work were to be temporarily exempted from the so-called 'final solution' and used for work in the concentration camps. This letter was signed by Himmler in person. I could not possibly be mistaken since Himmler's signature was well known to me.

Another Nazi penitent, a former SS General Erich von dem Bach-Zelewski, appeared for the prosecution, revealing on January 7 his change of heart:

Defence Counsel: *Do you believe that Himmler's speech, in which he demanded the extermination of thirty million Slavs, expressed only his personal opinion, or do you consider that it was part of the National Socialist attitude towards life?*

Zelewski: *Today I am of the opinion that this was the logical consequence of our attitude towards life.*

Counsel: *Today?*

Zelewski: *Today.*

Counsel: *What was your own opinion at that time?*

Zelewski: *It is difficult for a German to arrive at this conclusion. It took me a long time. . . . I am of the opinion that if, for decades, a doctrine is preached to the effect that the Slav race is an inferior race, and Jews are not even human at all, then such an explosion is inevitable.*

Finally, on March 8 the Defence came into action, and the case for Göring began. During the preceding period he, like the other defendants, had been forced to listen and bide his time. However, once they were all off-stage in the prison area, the prisoners could express themselves freely—with Dr Gilbert taking due note of what they said. They were shaken most of all by the evidence of the atrocities, and even Göring, though always attempting to stand up for Hitler, admitted to Gilbert that things had gone badly wrong: 'It is not my purpose to exaggerate my love for the Führer, because you know how he treated me at the end—But I don't know what to say—I think maybe in the last year and a half or so, he just left things to Himmler. But they must have had a definite understanding; otherwise it would have been impossible for such large-scale horrors to occur.' He admitted Hitler could be 'cruel and hateful', but added, 'I just can't imagine that he really did those things.'

Speer remained calm in his disillusionment; he had come to regard Hitler as 'a selfish, destructive force that had no consideration for the German people.' Frank continued to indulge in the histrionics of his penitence: 'There must be some basic evil in me—in all men. I'll be able to des-

cribe it better for you later. . . . I'll write something for you to understand it. . . . Mass hypnosis, that hardly explains it. . . . Ehrgeiz [ambition], that had a lot to do with it. Just imagine, I was a minister at 30; rode about in a limousine, had servants. I suppose I wanted to vie with the SS leaders. But Hitler cultivated this evil in man.' Hess was only interested in his mental condition, his capacity to 'concentrate'. Schacht, sitting in his fur coat, played endless solitaire.

When Speer caused his plot against Hitler to be slipped into the cross-examination of Ohlendorf, Göring was furious. The defendants had stared incredulously at each other in court, and Göring had raged and sworn. As soon as he could get at Speer during an interval, his anger erupted, but Speer remained cool. Göring was disgusted too by the German witnesses who were prepared to give evidence against their own country, and he indulged in a second angry outburst after the appearance of Paulus in court, shouting at his attorney in the interval: 'Ask that dirty pig if he knows he's a traitor! Ask him if he has taken out Russian citizenship papers!'

Solitary confinement

On February 15 a new order was introduced putting the defendants back into solitary confinement once they were outside the courtroom. Göring's attempts to dominate the others had much to do with this, and he was in consequence dejected and said to Gilbert: 'Don't you see all this joking and horseplay is only a comic relief? Do you think I enjoy sitting there and hearing accusations heaped on our heads from all sides? We've got to let off steam somehow.'

Later Andrus permitted the defendants to lunch together, but separated in small groups over five rooms, with Göring left by himself. Göring's comment was: 'Just because I am the Number One Nazi in this group doesn't mean that I am the most dangerous. Anyway, the Colonel ought to bear in mind that he is dealing with historical figures here. Right or wrong, we are historical personalities—and he is nobody.' But isolation from Göring had its effect on the others. Dönitz, representing the hierarchy of the armed services, said to Gilbert late in February: 'I must say, I was furious over the idea of being dragged to trial, in the beginning, because I did not know anything about these atrocities. But now, after hearing all this evidence—the double-dealing, the dirty business in the East—I am satisfied that there was good reason to try to get to the bottom of the thing.' Papen, according to Gilbert, was capable of working himself into a frenzy in his denunciation of Nazism.

Once on the stand, Göring undoubtedly fought back with courage and acuteness, acknowledging his particular responsibility for most of the activities in Hitler's régime short of any irregularity or atrocity, and violently denying any responsibility for the shooting of the RAF prisoners: 'Once they have been shot down, they are our comrades,' he said. His defence counsel, Dr Stahmer, spent 13 days presenting Göring in the most favourable light possible, so that he could not only defend himself eloquently, but at times even go into attack. The President had constantly to call Göring to order for making what developed into stirring propaganda speeches instead of answers to the questions put to him in the direct examination by Stahmer and the cross-examination by prose-



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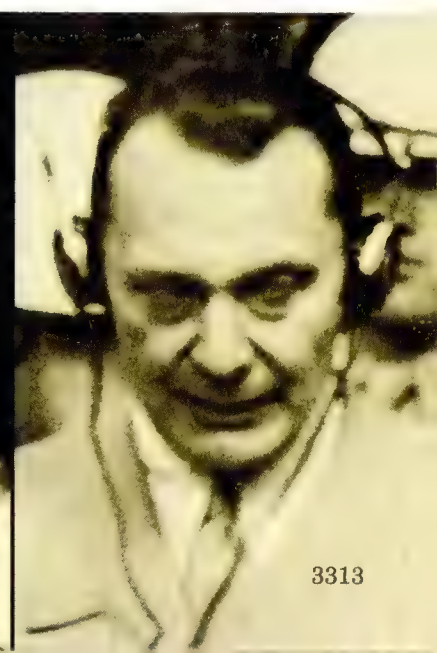


Imperial War Museum

Top left: Maxwell-Fyfe, the deputy British prosecutor. Behind him Mr Justice Jackson, who was goaded to fury by Göring's manner. Top right: Lord Justice Lawrence, President of the tribunal, heard over 140 witnesses.

Above left: Marshal Rudenko, the chief Russian prosecutor. Many defendants ostentatiously refused to listen to his case. Above right: The trial of the Nazi leaders was only one of many. Here lesser criminals, including the

notorious Irma Grese (number 9) are put on trial. Below: Four studies of Göring during the trial. His testimony was a highlight of the hearing, as he was self-assured, able, and lucid—in many instances a match for the prosecution



The shrunken head of a Pole hanged at Buchenwald



Göring: 'No, a policy for emigration, not liquidation of the Jews. I only knew there had been isolated cases of such perpetrations.'

cution counsel. Stahmer put up members of Göring's staff to assert that neither he nor they knew anything about the extermination camps, though some awkward signatures on correspondence dealing with certain punitive medical experiments for air pressure and sub-temperature reactions in the camps had to be got round.

Before Göring took the stand he displayed offstage all the nervousness of a great actor about to appear in the most demanding rôle of his career, but once out in the limelight he soon began to show a performer's mettle, making everything sound plausible, reasonable, even good-humoured. He asserted his absolute loyalty to Hitler, and the historical necessity for a leadership principle in Germany:

Germany, through the long centuries of the monarchy, has always had a leadership principle. . . . I am of the opinion that for Germany, particularly at that moment of its lowest existence when it was necessary that all forces be welded together in a positive fashion, the leadership principle—that is, authority from above and responsibility from below—was the only possibility.

Göring's aim was to win his audience with his lucidity, his firmness and his astringent humour; he was out suddenly to inject into the trial after the long, and often torpid, months of the prosecutors' speeches and documents, the star quality of his personality like a gale of fresh air. He surveyed the history of the movement in detail, but side-stepped any personal involvement in bloodshed, such as the Röhm purge, except when engaged directly in the defence of Germany. He was proud to have rebuilt the Luftwaffe. As for the works of art he was alleged to have purloined, these were in any case for his national collection and he had always either paid for them or was in process of paying compensation for them. And the Jews—well, his concern about them was solely economic and cultural, to put them in their proper place in German life, to reduce their undue status, not to eliminate them. He was prepared to acknowledge his signature on the notorious Nuremberg race laws:

I should like to emphasise that although I received oral and written orders and commands from the Führer to issue and carry out these laws, I assume full responsibility for them. They bear my signature; I issued them, and consequently I am responsible, and do not propose to hide in any way behind the Führer's order.'

And the concentration camps? He knew nothing of them after ceding them to Himmler in 1934; any excesses of discipline which had taken place prior to this he had ordered to be investigated and punishment given to offenders.

The drama of this hearing began when Mr Justice Jackson began his fierce cross-examination, for which it soon became apparent that he was inadequately briefed historically. Time and again Göring scored off him with his authoritative statements about the workings of the one-party state; time and again he made his replies sound like a schoolmaster correcting the half-knowledge of a student. For example:

Jackson: *I can only repeat my question, which I submit you have not answered. Did you at that time see any military necessity for an attack by Germany on Soviet Russia?*

Göring: *I personally believed that at that time this danger had not yet reached its climax, and therefore the attack might not yet be*

necessary. But that was my personal view. Jackson: And you were the Number Two man at that time in all Germany?

Göring: *It has nothing to do with my being second in importance. There were two conflicting points of view as regards strategy. The Führer, the Number One man, saw one danger, and I, as the Number Two man, if you wish to express it so, wanted to put through another strategic measure. If I had imposed my will every time, then I would have probably become the Number One man. But since the Number One man was of a different opinion, and I was only the Number Two man, his opinion naturally prevailed.*

Jackson's line of argument was to try to expose Göring, Hitler's Number Two man, as equally responsible with Hitler. Göring, with bitter enough experience on his side, reiterated that to be Number Two in a one-man state was literally to be Number Two. Time and again, both counsel and President tried to make Göring give monosyllabic answers, but he was so bursting with pent-up need to speak and so lucidly entertaining in presenting his particular point of view that the court fell under his spell and seemed forced to listen. Sir Norman Birkett (as he then was), anxious about the way things were going, began to make notes on the impact of Göring's personality. On March 18 he wrote:

'Göring reveals himself as a very able man who perceives the intention of every question almost as soon as it is framed and uttered. He has considerable knowledge, too, and has an advantage over the Prosecution in this respect, for he is always on familiar ground. He has knowledge which many others belonging to the Prosecution and Tribunal have not. He has therefore quite maintained his ground and the Prosecution has not really advanced its case at all. Certainly there has been no dramatic destruction of Göring as had been anticipated or prophesied.'

Sir Norman also wrote:

'Göring is the man who has really dominated the proceedings, and that, remarkable enough, without ever uttering a word in public up to the moment he went into the witness-box. . . . It has been obvious that a personality of outstanding, though possibly evil qualities, was seated there in the dock. Nobody appears to have been quite prepared for this immense ability and knowledge. . . . Suave, shrewd, adroit, capable, resourceful, he quickly saw the elements of the situation, and as his confidence grew, his mastery became more apparent.'

Disastrous witness

Not all of Göring's witnesses were helpful to him, however. Birger Dahlerus, the Swedish businessman who had approached him on the eve of war in an informal attempt to induce him to stop it, was forced by the formidable Maxwell Fyfe to admit the duplicity of Göring's behaviour at this time, using Dahlerus as a means of stopping British intervention on behalf of Poland rather than stopping the war itself. Göring, back on the stand, tried to retrieve the situation, but was less effective now than formerly. However, when Jackson resumed his cross-examination, Göring so riled him that he lost his temper, flung the earphones down with a clatter and protested to the President:

'It is perfectly futile to spend our time if we cannot have responsive answers to our questions. (The witness interposed slightly here.) We can strike these things out. I do

not want to spend time doing that, but this witness, it seems to me, is adopting, and has adopted, an arrogant and contemptuous attitude towards the Tribunal which is giving him the trial which he never gave a living soul, or dead ones either.'

There was a moment of embarrassment before Lord Justice Lawrence took control and adjourned the session. Off-stage, Göring was delighted: 'If you all handle yourselves half as well as I did, you will do all right,' he said to the others.

He was not so delighted, however, when Jackson faced him with the record of his brutal, jocular discussion of how the Nazis might best confiscate Jewish property after the pogrom of November 1938. Jackson pressed on him document after document representing his orders for the persecution and dispossession of the Jews. Maxwell Fyfe followed, using a different technique of cross-examination as a result of Jackson's experience; dealing with the murder of the RAF prisoners of war, he thrust home on points of detail in order to expose Göring's evasion of responsibility where he should have been responsible or his pleas of lack of knowledge where he should have been informed. Göring proved far less effective in defending himself on such points of detail than in his generalisations. Maxwell Fyfe hammered him again and again over the concentration camps until his position as a man of authority in Hitler's state was made to appear absurd:

Maxwell Fyfe: *You heard what I read you about Hitler, what he said to Horthy and what Ribbentrop said, that the Jews must be exterminated or taken to concentration camps. Hitler said the Jews must either work or be shot. That was in April 1943. Do you still say that neither Hitler nor you knew of this policy to exterminate the Jews?*

Göring: *For the correction of the document—*

Maxwell Fyfe: *Will you please answer my question. Do you still say neither Hitler nor you knew of the policy to exterminate the Jews?*

Göring: *As far as Hitler is concerned, I have said I do not believe it. As far as I am concerned, I have said that I did not know, even approximately, to what degree this thing took place.*

Maxwell Fyfe: *You did not know to what degree, but you knew there was a policy that aimed at the extermination of the Jews?*

Göring: *No, a policy for emigration, not liquidation of the Jews. I only knew there had been isolated cases of such perpetrations.*

Maxwell Fyfe: *Thank you.*

After this Göring seemed utterly discredited, and his subsequent struggle with Rudenko an attempt to maintain a lost cause. Another witness, called much later in the trial on behalf of Frick, proved of great embarrassment to the former Reich Marshal. This was Dr Hans Bernd Gisevius, who had been closely involved with the German resistance movement, which he described in detail, and who went out of his way to implicate Göring with the murderous excesses of the Röhm purge. He even declared that Göring, through Stahmer, had tried to prevent him giving evidence that Göring had deliberately framed Field-Marshal Werner von Blomberg in 1938 by encouraging his marriage to an alleged former prostitute in order to be able to expose him subsequently and so enable Hitler to be rid of him. Jackson demanded that the Court be fully informed of this attempt to browbeat a witness, and Göring was further discredited. Unable

to speak in court, Göring became violent outside it and could scarcely be induced to go back to his cell. Back in court, Jackson, with some relish, quoted Schacht's denunciation of Göring which he had made under interrogation. Once again, any appearance of solidarity among the defendants was completely undermined. Göring was both affronted and dejected by the laughter in court at Schacht's statement that he dressed up at home like Nero and used lipstick.

Hess, the next defendant, refused in the end to take the stand, and his defence fell flat, as did that of Ribbentrop, who said to Gilbert in his cell: 'We are only living shadows—the remains of a dead era.' Ribbentrop gave his evidence in a wordy, perfunctory manner. All that emerged was the occasional impression of Hitler's strength and dominance over a fundamentally weak man. Otherwise Ribbentrop excited nothing but the near-contempt of his fellow prisoners. 'What a pitiful spectacle!' exclaimed Göring. 'There's no use letting that fool talk any more,' said Papen. Under Maxwell Fyfe's cross-examination, all Ribbentrop could do was try to evade the obvious evidence against him that he had aided Hitler's conspiracy against Austria, Czechoslovakia, and Poland. Keitel's defence followed; he explained that he only obeyed orders and had no command responsibility; he had signed the punitive documents, he said, under Hitler's orders, when these documents were presented as evidence in court. 'I never issued or signed anything,' he said, 'which did not accord in principle with his wishes.' Keitel went so far as to show a measure of penitence for what had happened; his ready admissions in court excited the contempt of Göring. The trial as the last great platform for Nazism was proving an utter failure.

But everything was not going as it should from the Tribunal's point of view either. Sir Norman Birkett, although never of the opinion that the trial was inadvisable as an act of international justice, was by now disturbed that it might begin to appear ridiculous if it were allowed to drag on month after month in this manner. 'Every effort must be made,' he wrote in his private record, 'to see that the proper effect is produced as far as possible.'

Hoess, the man of Auschwitz

The most appalling single episode in the trial was the evidence given by Rudolf Hoess, the former Commandant of Auschwitz, who had been picked up in March by the British Military Police near Flensburg, and handed over to the Americans in time to appear as a witness at Nuremberg in April. He was questioned by Kaltenbrunner's counsel, since he had been called ostensibly to exonerate Kaltenbrunner from implication in the crime of genocide. Without flinching, and speaking in a dead and apathetic voice, the principal Nazi technician of genocide described under oath during the morning of April 15 with the utmost frankness what had been done at Auschwitz and how it had been done. He had received, he said, his orders from Himmler:

In the summer of 1941, I was summoned to Berlin to Reichsführer-SS Himmler to receive personal orders. He told me something to the effect—I don't remember the exact words—that the Führer had given the order for a definite solution of the Jewish question. We, the SS, were to carry out that order. If it was not carried out then, the Jews would later on destroy the German people. We had

chosen Auschwitz because of its easy access by rail and also because the extensive site could be readily isolated.

Later, under cross-examination by Colonel Amen, Hoess acknowledged the truth of factual statements made by him when interrogated and read by Amen in court:

Amen: I will omit the first paragraph and start with paragraph two—I have been constantly associated with the administration of concentration camps since 1934, serving at Dachau until 1938; then Adjutant in Sachsenhausen from 1938 to 1 May 1940, when I was appointed Commandant of Auschwitz. I commanded Auschwitz until 1 December 1943, and estimate that at least 2,500,000 victims were executed and exterminated there by gassing and burning, and at least another half-million succumbed to starvation and disease, making a total dead of about 3,000,000. This figure represents about 70 per cent or 80 per cent of all persons sent to Auschwitz as prisoners, the remainder having been selected and used for slave labour in the concentration-camp industries. Included among the executed and burnt were approximately 20,000 Russian prisoners of war (previously selected and taken out of prisoner-of-war cages by the Gestapo) who were delivered to Auschwitz in Wehrmacht transports operated by regular Wehrmacht officers and men. The remainder of the total number of victims included about 100,000 German Jews, and great numbers of citizens, mostly Jewish, from Holland, France, Belgium, Poland, Hungary, Czechoslovakia, Greece, or other countries. We executed about 400,000 Hungarian Jews alone at Auschwitz in the summer of 1944.' That is all true, witness?

Hoess: Yes, it is.

After this, and the other factual evidence given by Hoess that spring morning, little the service chiefs could say about having to obey their orders seemed to matter.

The individual hearings were to continue until July. The Court had next to listen to the Security Police Chief Kaltenbrunner's obtuse denials of all the charges against him: *I had no idea of the existence of these Action Groups or commandos described by Ohlen-dorf. Later on I heard they existed. . . . As I have already said once, I have never had authority to sign on my own initiative a so-called order for execution, that is to say a death sentence. Apart from Hitler, nobody in the whole Reich had such authority except Himmler and the Reich Minister of Justice. . . . I never saw a gas chamber, either in operation or at any other time. . . . Neither at this time nor at any other time did Himmler ever take me into a concentration camp or suggest that I should visit one. . . .*

He then claimed that the exterminations ceased at his personal intervention in October 1944, and that he had only known of them from Himmler the previous spring. Rosenberg similarly claimed to have opposed the atrocities committed in the Eastern territories he nominally controlled. Streicher, too, though crudely defending his anti-Semitism as a form of national patriotism, denied any personal responsibility for the genocide of the Jews. Under cross-examination, however, he was proved to have advocated their extermination and to have known at least something of what was happening in the extermination camps.

A dominating factor throughout the trial was the determination of the defendants to try to deny all knowledge of the extermination of the Jews. Fritzsche, a senior official

of Goebbels' Ministry of Propaganda and head of its radio division, denied the knowledge firmly not only for himself but for the German people as a whole: 'I, as a journalist who worked during that period,' he said, 'am firmly convinced that the German people were unaware of the mass murders of the Jews, and it was always asserted that these were rumours; and reports which reached the German people from outside were officially denied again and again.' He himself had personally received official denials of these rumours from Goebbels and Heydrich.

Among the defendants it was Frank who made the greatest show of confessing his crimes: 'I, myself,' he said in court, 'speaking from the very depths of my feelings and after the experiences of the five months of this trial, want to say that now, after I have gained a full insight into all the horrible atrocities which have been committed, I am possessed of a deep sense of guilt.' Schirach also expressed a feeling of guilt. But Frank also went out of his way to claim that he did not know what had been happening in the extermination camps, even in the area of occupied Poland which he administered:

Defence Counsel: *Witness, did the concentration camps in the Government General come under you, and did you have anything to do with their administration?*

Frank: *Concentration camps were entirely a matter for the police and had nothing to do with the administration. Members of the civilian administration were officially prohibited from entering the camps.*

Counsel: *Have you yourself even been in a concentration camp?*

Frank: *In 1935 I participated in a visit to the Dachau concentration camp, which had been organized for the Gauleiters. That was the only time that I have entered a concentration camp.*

Counsel: *Did you ever participate in the annihilation of the Jews?*

Frank: *I say yes, and the reason why I say yes is because having lived through the five months of the trial, and particularly after having heard the testimony of the witness Hoess, my conscience does not allow me to throw the responsibility solely on these small people. I myself have never installed an extermination camp for Jews or supported the existence of such camps; but if Adolf Hitler personally has laid that dreadful responsibility on his people, then it is mine too, for we have fought against Jewry for years; and we have indulged in the most horrible utterances; my own diary bears witness against me. Therefore, it is no more than my duty to answer your question in this connection with 'yes'. A thousand years will pass and this guilt of Germany will still not be erased.*

German resistance to Hitler

Other evidence which caused a marked stir during the ensuing months was that of Gisevius and Speer. Gisevius, called as a witness on behalf of Frick, was determined to create an effect on his own account as a surviving member of the German resistance with a very complete knowledge of the years of planning which lay behind the abortive attempt to assassinate Hitler on July 20, 1944. Gisevius occupied the stand for the better part of two days during April, and through him the world heard more of the resistance than had previously been commonly known. He was explosive about Göring, as we have seen, but equally determined to help Schacht, presenting him as an important member in the resistance.



On the night of October 14/15 those condemned to death were hanged, except Göring (below) who took poison



Sado-Open Mundi

An additional attempt on Hitler's life, as we have seen, was that already claimed by Speer through a defence counsel. On June 20 he revealed on the stand how he had planned during February 1945 to introduce a poison gas through a ventilator in Hitler's bunker. The main guilt of Speer, like that of Sauckel and Funk, lay in his exploitation of great numbers of slave workers in the armaments factories. He did not attempt to shirk his responsibility, and he was by far the most rational among those defendants who experienced a genuine sense of guilt. His principal statements showed this:

This war has brought inconceivable catastrophe to the German people and has started a world catastrophe. Therefore it is my unquestionable duty to assume my share of responsibility for this misfortune before the German people. This is all the more my obligation, all the more my responsibility since the head of the late government has evaded responsibility before the German people and before the world. I, as an important member of the leadership of the Reich, therefore share in the total responsibility, beginning with 1942. . . .

The German people remained faithful to Adolf Hitler until the end. He betrayed them knowingly. He finally tried to throw them into the abyss. . . .

I only wanted to say that even in an authoritarian system the leaders must accept a common, united responsibility, and that it is impossible after the catastrophe to avoid this responsibility. If the war had been won, the leaders would presumably have laid claim to full responsibility. But to what extent this is punishable or immoral, that I cannot decide and it is not for me to decide.

The other former ministers, Papen, Neurath, Seyss-Inquart, Funk and Schacht, refused to share in this public acknowledgment of guilt. Maxwell Fyfe cut through Papen's careful evasions by quoting early, sycophantic statements he had made in a speech in November 1933—'Let us in this hour say to the Führer and the new Germany that we believe in him and his work'—and in a letter written to Hitler after the Röhm purge in 1934—'I remain loyally devoted to you and to your work for our Germany.' He referred also to Papen's readiness to serve as Hitler's ambassador in both Vienna and Ankara. Relentlessly, taking his time, Sir David pressed home every documentary point and every action, or inaction, to show how Papen sought to keep in Hitler's favour after the severe shaking he had received at the time of the Röhm purge. Whatever he thought of Hitler now (in an interrogation Papen had said Hitler was 'the greatest crook' he had ever seen in his life), his fear of the Führer was such that he did all he could not to offend him when he was in power. Sir David concluded:

What I am putting to you is that the only reason that could have kept you in the service of the Nazi Government, when you knew of all these crimes, was that you sympathised and wanted to carry on with the Nazis' work. That is what I am putting to you—that you had this express knowledge; you had seen your own friends, your own servants, murdered around you. You had the detailed knowledge of it, and the only reason which could have dominated you and made you take one job after another from the Nazis was, that you sympathised with their work. That is what I am putting to you, Herr von Papen.

In his memoirs, however, Papen paid

tribute to Sir David: 'In my opinion he was by far the most able jurist in the whole prosecution. He was a complete master of the art of cross-examination, so important in Anglo-Saxon law. Himself a politician and Member of Parliament, he had a much clearer view of the political developments at stake than had his American colleagues. He employed towards me a much sharper tone than he had used with any of the other defendants.'

But Sir David was in fact even more severe with Neurath, like Papan a representative of the older, pre-Hitler school of diplomats, for his suppression of the Czechs when he was Reich Protector of Bohemia and Moravia, while Seyss-Inquart's rule in occupied Holland was exposed under cross-examination by the French prosecutor, Dephin Deberest. Funk, as President of the Reichsbank, had in addition to many charges relating to the looting of the occupied territories, to evade awkward questions about the vast SS deposits of jewellery taken from prisoners in the concentration camps, and the hoards of gold extracted from the teeth of genocide victims. Schacht's defence proved to be on somewhat stronger ground; for all his dealings with Hitler and his initial rearmament of Germany, he had, after all, resigned his ministry in a truculent mood in 1937 and even joined the underground resistance against the Führer, in consequence of which he had ended up a prisoner of the Gestapo. While the prosecution maintained it was Schacht who had produced the economy which enabled Germany to become an aggressor, Schacht himself in the box vigorously claimed that Hitler had betrayed those who had initially supported him. Jackson, cross-examining, was unable to shake him. Schacht claimed that he would in the end have attempted to kill Hitler himself had he had the opportunity.

Schacht has given a vivid picture of the trial as it appeared from the prisoners' dock:

The great hall in which the proceedings took place was entirely without natural light. The windows of Nuremberg's former Court of Assizes had been hung with draperies so as to exclude the daylight. Artificial illumination shed a sickly unbroken glare over everything. Despite the fact that for the accused persons it was a matter of life and death, the place vibrated with an unrest reminiscent of an ant-heap. The Prosecutors of the various nations were surrounded by their respective staffs. Messengers kept arriving with reports and papers. The sight of the American women secretaries at their clattering machines created a kind of optical confusion. To watch them incessantly chewing gum was to feel as though they were chewing on every word. On the press-stand, immediately opposite the witness-stand, it was not much quieter. Only the few German reporters—the only ones not in uniform and therefore immediately recognisable—remained unobtrusively in the background. The whole effect was something of a nightmare. Many of the accused suffered from overwrought nerves. In the building itself the shrill tones of American light music would frequently blare forth: curiously enough the song-hit of that time was Don't fence me In, and the guards played it over and over, day and night.

Trial of military leaders

Besides the ministers, there were the generals and admirals. Jodl, chief of operations staff for the Army High Command, had

far more character than Keitel, and his wife actually assisted the counsel appointed for his defence. He gave a brilliant survey of the strategy of the war from the point of view of the German High Command, but he, like the others, could not evade the prosecution's challenge that he must take responsibility for the orders he had drafted which led to war crimes being committed against prisoners.

As for Admirals Dönitz and Raeder, the main case against them was that they had supported a brutal conduct of the war at sea, leading to unnecessary loss of life through issuing orders to U-boat commanders not to rescue survivors, and, in Raeder's case, that he had instigated the invasion of Norway. Maxwell Fyfe failed in his efforts to make Dönitz admit that he had issued orders which directly led his naval commanders to kill survivors, while Raeder stuck it out that 'there was not any such unrestricted U-boat warfare but merely an intensification of measures, step by step, as I have repeatedly said, and these were always taken only after the British took some measure'—by which he meant the arming of merchant ships. Both admirals had a ready, or evasive, answer to every difficult question put to them.

The final speeches of the defence and prosecution followed in July. The defence counsels, who spoke collectively for over two weeks, argued that in the long run the guilt was Hitler's; they looked for every loophole which might show that the defendants were either not implicated in war crimes or had done their best to mitigate their severity. Hitler had established an autocracy and those at his command had to obey him.

Mr Justice Jackson and Sir Hartley Shawcross, speaking along with the other chief prosecutors over a period of four days during which the prosecution's case was summarised in detail, rose to this final occasion with eloquence. Jackson said:

No half-century ever witnessed slaughter on such a scale, such cruelties and inhumanities, such wholesale deportations of peoples into slavery, such annihilations of minorities. The terror of Torquemada pales before the Nazi Inquisition. . . . These men in this dock, on the face of this record, were not strangers to this programme of crime, nor was their connection with it remote or obscure. . . . They are the very highest surviving authorities in their respective fields and in the Nazi State. No one lives who, at least until the very last moments of the war, outranked Göring in position, power, and influence. No soldier stood above Keitel and Jodl, and no sailor above Raeder and Dönitz. Who can be responsible for the double-faced diplomacy if not the Foreign Ministers, von Neurath and Ribbentrop, and the diplomatic handyman, von Papen. . . .

It is against such a background that these defendants now ask this Tribunal to say that they are not guilty of planning, executing, or conspiring to commit this long list of crimes and wrongs. They stand before the record of this trial as bloodstained Gloucester stood by the body of his slain King. He begged of the widow, as they beg of you: 'Say I slew them not.' And the Queen replied, 'Then say they were not slain. But dead they are —' If you were to say of these men that they are not guilty, it would be as true to say that there has been no war, there are no slain, there has been no crime.

Sir Hartley Shawcross spoke of—
Twelve million murders. Two-thirds of the Jews in Europe exterminated, more than six

millions of them on the killers' own figures. Murder conducted like some mass-production industry in the gas-chambers and the ovens of Auschwitz, Dachau, Treblinka, Buchenwald, Mauthausen, Maidanek, and Oranienburg. And is the world to overlook the revival of slavery in Europe, slavery on a scale which involved 7,000,000 men, women, and children taken from their homes, treated as beasts, starved, beaten and murdered?

A further month was occupied with the cases of the indicted organisations. It was an anti-climax after what had gone before, a record for history. On August 31 came the brief, final statements by the defendants; Speer in particular, prophet of the future, spoke of the destruction the technical resources initiated in the Hitler war would cause if developed in any war to come. The trial, for him at least, stood as a great warning for all mankind. On September 30, the day for which everyone had waited so long, came the judgment itself, a lengthy pronouncement read in turn by each of the judges in his native tongue. Once more it traced the whole history of Nazi government, its record of aggression, its denial of human rights and liberties, its utter barbarism. The individual judgments and sentences followed on October 1.

Behind the scenes, in their cells, the prisoners had had to wait a full month for this day. Their morale was by now at its lowest, though they were permitted a daily visit by their wives. Only Schacht still remained confident; Keitel was too dejected even to receive his wife. On October 1 each in turn stood alone in the dock. When Göring, the first to be called upon, stood to receive his sentence, the equipment suddenly failed, and there was a moment of suspended tension when judge and defendant had to face each other in silence while the technicians restored the circuit. Göring was told his sentence was death by hanging. He stood for a moment quite still, then dropped his earphones with a clatter, turned and walked out of the courtroom, his face drawn and pale, his eyes wide. He went straight to his cell and lay down, fighting to control his emotion. The others received their sentences variously, some quiet, some aghast, some in a state of shock, some unable even to remember the terms of their penalty. Sauckel alone is recorded to have wept. Papen and Fritzsche were overcome by their acquittal, which they had not expected, but, like Schacht, they scarcely knew what to do for the best, since they already knew that the police of the German civil administration were waiting outside the prison to re-arrest them and try them afresh. As it was, immediately after their acquittal they had to stand the vociferous experience of a joint press conference in a hall packed with journalists and soldiers urging them to accept drinks and cigarettes.

On the night of October 14/15 those condemned to death by hanging were executed on scaffolds erected in the prison gymnasium. Only Göring cheated the hangman by poisoning himself in his cell two hours before the execution was due to take place. He left a letter for Colonel Andrus explaining how he had managed to keep two capsules of poison in his possession throughout his captivity. He committed suicide, he said, because his plea to be executed by shooting had been refused. It did not befit the Second Man of Nazi Germany to hang by his neck until he were dead.

[For Roger Manvell's and Heinrich Fraenkel's biographies, see Vol I, p. 26.]

The Men in the Dock

War Crimes and Tribunals

John Keegan

24 men were indicted by the International Military Tribunal. Of these, three were not to take their place in the dock. Robert Ley, the Nazi labour leader, committed suicide in his cell before the proceedings had got beyond the formal indictment. Bormann, Nazi Party Secretary, had not been arrested. (It is known that he escaped from the bunker but several witnesses testified that they had later seen his corpse; on the other hand, some believe that he escaped to South America, perhaps even that he is still alive.) Gustav Krupp von Bohlen und Halbach, head of the Krupp armament firm, was judged unfit to stand trial.

The 21 arraigned may be divided roughly into four categories. First and most easily identified are the commanders: Jodl, Keitel, Raeder, and Dönitz. Next, the functionaries: men who served the Nazi state, but rather as professional administrators or technical experts than as committed party members. They ranged in importance from Schacht and Speer, each of whom were masters in their own fields and hence had preserved a certain personal independence, to arrivistes like Funk and Fritzsche. Then the Nazi party men: a group in which Göring was by far the most important but which also included people like Rosenberg and Streicher. Finally the agents of mass murder and oppression, like Kaltenbrunner, Frank, and Sauckel. Inevitably the membership of these groups overlaps. Papen, the failed politician, perhaps fits into none of them.



Hermann Göring was Reich Marshal, Commander-in-Chief of the Luftwaffe, Air Minister, President of the *Reichstag*, and Hitler's designated successor, 1939–April 1945. He was born in 1893, in Rosenheim, Bavaria, the son of a consular official and was educated privately and at the Lichterfelde Cadet College, Berlin. Commissioned 1912 into the 112th Infantry, he transferred in 1914 to the flying service and rose eventually to command the Richthofen 'Circus' after that great ace's death. He himself acquired an ace's reputation during the war, shooting down 22 Allied aircraft and winning the *Pour le Mérite*, Germany's highest decoration for gallantry. He refused transfer into the service of the Republic after the war and was soon engrossed in Nationalist politics. In 1922 he met Hitler and accepted from him command of the party militia, the *Sturmabteilungen*.

He took part in the Munich *putsch*, was wounded in the shooting, escaped, and spent the years 1923-27 in exile until pardoned by general amnesty. On his return he set up successfully as a businessman and resumed his intimate association with Hitler. He was elected in 1928 to the *Reichstag*, of which he was to become president in 1932, and in the final years of the 'struggle for power' did much to foster good relations between Hitler and the leaders of industry. He was appointed Minister without Portfolio and Prussian Minister of the Interior in Hitler's first cabinet. The latter was a key position, which he used to suppress opposition to the Nazi régime, to create the Gestapo, and establish the first concentration camps. He was responsible, with Himmler, for the planning and execution of the Röhm Purge in 1934. In 1935 he was nominated to command the revived Luftwaffe and in 1936 as Trustee of the Four Year Plan, with plenipotentiary powers over the German economy. In 1939 Hitler named him his successor. Thus at the outbreak of war he was without question the second man in the Reich.

Thereafter his indulgence in the pleasures of power and position led slowly to a decline in his real importance. The failure of the Luftwaffe after 1942, due largely to his own lack of attention to its management, completed his fall. He ceased to attend on the Führer or his officers. He appeared content to have exchanged the burdens of leadership for the pleasure of drugs, the table, the chase—both of game and art-treasures, the design of exotic costumes, and the management of his sumptuous estate at Karinhall (named after his adored first wife). In the last week of the war he intemperately suggested to Hitler that the time for him to succeed had arrived and was deprived of all titles and offices and placed under arrest. He was captured in South Germany shortly afterwards. Arraigned at Nuremberg as principal defendant, he displayed during the proceedings much of the energy, panache, and enjoyment of conflict which had raised him to power, refusing to disown responsibility for any of the charges levelled, badly shaking the principal American prosecutor and bullying his co-defendants to share his attitude. He was indicted on all four counts and convicted on all four; sentenced to death, he took poison on the eve of execution.

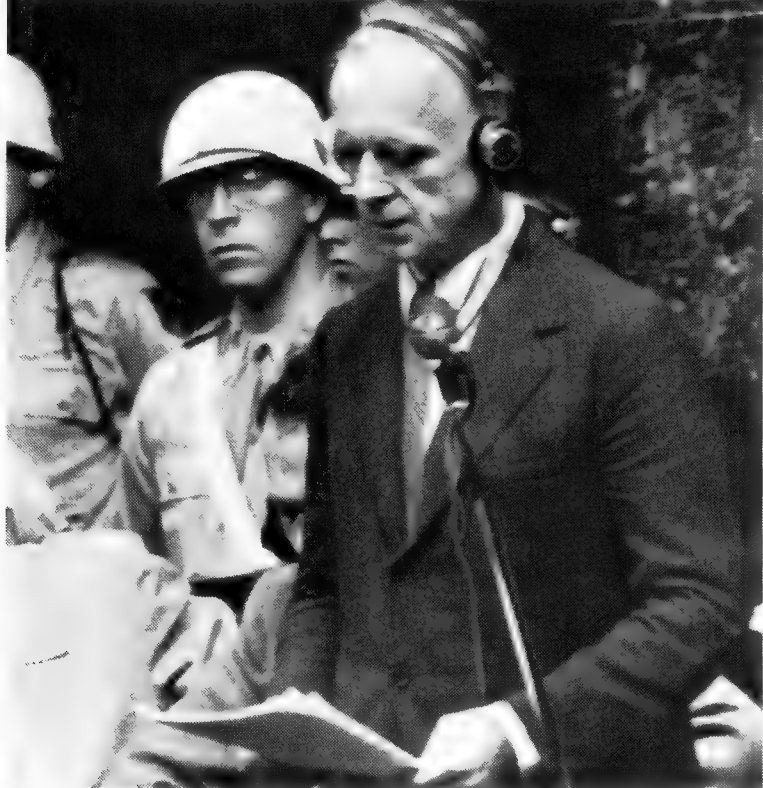
Göring, pictured during a press conference after capture: death



Hess, gaunt from long captivity, during the trial: life imprisonment

Rudolf Hess was Hitler's deputy. He was born in 1894, son of a German merchant trading in Egypt where he spent his first 14 years. He came to Germany to complete his education, served in the same regiment as Hitler (though they did not then meet) and later became a pilot. After the war he entered Munich University but was already committed to a life of right-wing politics. He was wounded in the fighting which overthrew the Communist government of Bavaria in 1919, and joined the Nazi party in 1920, after hearing Hitler speak. He soon became his secretary and close friend, took part in the Munich *putsch* and served his sentence with Hitler in Landsberg, where he helped with the writing of *Mein Kampf*. Not self-seeking and unswervingly loyal, he was promoted by Hitler to posts of increasing importance: Deputy to the Führer in 1933, Minister without Portfolio shortly after, successor-designate to Göring in 1939. The war, however, eclipsed his importance, which his meagre talents in any case scarcely justified, and in 1941 he flew on a self-appointed mission to Scotland to negotiate peace. He spent the rest of the war in prison, disregarded by the British and disowned by Hitler, who had cast public doubt on his sanity. He was indeed brought to Nuremberg apparently suffering from amnesia but was judged fit to plead and later recovered his memory. He was indicted on all four counts, convicted on counts 1 and 2, and sentenced to life imprisonment. He is still confined in Spandau prison, Berlin, and refuses all contact with his family.





Ribbentrop, former German Foreign Minister, defends himself: death

Arthur Seyss-Inquart was governor of Austria and later of occupied Holland. He was born in 1892 in Iglau, Moravia, then Austrian territory, subsequently Czech; hence he was *Volksdeutsch* (member of an ethnic German minority). He read law at Vienna University and served throughout the First World War, like Dollfuss, in the Tyrol *Kaiserjäger*s. He set up in practice in 1921 and devoted himself, according to his testimony, to working for the *Anschluss* (union of Austria with Germany) through the Austrian *Volksbund* (Parliament). Although not a member of the Nazi party until 1938, he was well known for his Nazi sympathies and was imposed by Hitler on the Austrian government first as Minister of the Interior, then as Chancellor, in early 1938. He forced a law through the Austrian parliament making Austria a province of Germany and was subsequently appointed President (the title was later changed to Governor). Seyss-Inquart was the principal agent of the *Anschluss* on the Austrian side. At the outbreak of war he left Austria, first to become briefly Deputy Governor of occupied Poland (under Frank), then Reich Commissioner for the occupied Netherlands. Responsible for German occupation policy in Holland, in particular the deportation of forced labour to Germany, the rounding-up of the Dutch Jews, and the execution of arbitrary justice. He was indicted on all four charges, convicted on charges 2, 3, and 4, and hanged.

Seyss-Inquart, pictured during his days of power: death



Joachim von Ribbentrop was Foreign Minister, 1938-45. He was born in 1893 at Wesel, Rhineland, the son of an officer. (The family was not technically 'noble'; he acquired the 'von' from an aunt in later life.) He was educated in Alsace, Switzerland, and London and then emigrated to North America, working in a variety of jobs in Canada and the United States. In 1914 he managed to return to Germany, served throughout the war, was wounded, and resigned as a lieutenant in 1919. During the 1920's he was in business, principally as the foreign representative of a wine merchant. He joined the Nazi Party in 1932 and impressed Hitler by his accounts of his knowledge of foreign countries and acquaintance with important foreigners. Thus he was appointed by him party representative and personal adviser for foreign affairs. He was promoted Delegate for Disarmament Questions in 1934 and Minister Plenipotentiary-at-Large in 1935, in which capacity he negotiated the Anglo-German Naval Agreement and the Anti-Comintern Pact. In 1936 he became Ambassador in London, where he did much to foster the policy of appeasement and earned the personal dislike of its opponents. In 1938 he succeeded Neurath as Foreign Minister. 'Vain and incompetent' (Schacht's description), he steadily lost influence throughout the war and was a broken man by its end. He was indicted on all four counts, convicted on all four, and hanged.



Rosenberg, Nazi chief in Russia, answers for his stewardship: death

Alfred Rosenberg was the party's ideologist and Minister for the Occupied Eastern Territories, 1941-45, and author of the *Myth of the Twentieth Century*, the principal statement of Nazi racial, geopolitical, and historical beliefs. He was born in the German community at Reval, Estonia (then part of Russia) in 1893. He was educated as an architect in Moscow but fled after the Revolution of 1917, joining the Nazi party in 1919, becoming editor of its paper, the *Völkischer Beobachter*, and took part in the Munich *putsch*. He was promoted deputy leader but resigned in 1924. He was elected to the *Reichstag* in 1930, where he spoke for the party on foreign affairs. Appointed head of the party's Foreign Affairs Office in 1933 and Hitler's deputy for the ideological training of the party in 1934, he oversaw relations with the foreign Nazi parties, particularly Quisling's in Norway. He was appointed Minister for the Occupied East in 1941 with the task of organising the territories on the basis most advantageous to Germany. He advanced plans to establish semi-independent regimes and, though the author of many harsh decrees and acts, he opposed the systematic plunder, terror, and enslavement of the populations practised by Koch and Frank. But his influence was too weak for his opposition to take effect. 'The tragedy of Rosenberg . . . was actually to have believed in the Nazi *Weltanschauung*' (Alan Bullock). He was indicted on all four charges, convicted on all four, and hanged.

Hjalmar Horace Greeley Schacht was President of the Reichsbank, 1933-9, Minister of Economics, 1935-7, and Hitler's 'economic wizard'. He was born in 1877. His father, by birth a native of Danish Schleswig-Holstein, emigrated to America after Schleswig-Holstein's annexation to Germany; hence his son's middle names, those of the famous New York journalist. He later returned to Germany where Schacht completed his university education and began his banking career. He quickly showed a talent for finance which amounted to genius, amassed a private fortune, served as economic director of occupied Belgium during the First World War, and was appointed Currency Commissioner in 1923 with the task of halting the inflation which it had brought about. Having stabilised the currency, he was appointed President of the Reichsbank in 1924, a post which he held until 1930 and used to evade German fulfilment of reparations. After his resignation over a policy disagreement, he attached himself to Hitler's entourage (though never joining the party), advised him on economic affairs and was appointed by him President of the Reichsbank in 1933 and Economics Minister in 1935. It was his monetary manipulations which financed the early stage of German rearmament. After 1936, however, when Göring assumed overall control of the German economy, he grew increasingly disturbed by Nazi economic policy, resigned his Ministry in 1937 and, after further disagreement with Hitler, was dismissed from his bank presidency in 1939. He lived privately until 1944, when he was arrested on (unfounded) suspicion of complicity in the bomb plot and confined in Flossenbürg. He maintained an attitude of pained surprise throughout the trial, conducted his case with great skill (the prison psychologist allotted him the highest score—143—in his IQ tests of the prisoners), and was acquitted. He has since amassed a second fortune and acted as adviser to many undeveloped countries. He has been called 'the German Talleyrand'. He was indicted on counts 1 and 2 and convicted of neither.



Popperfoto

Julius Streicher in the days of his power as editor of *Der Stürmer*

Julius Streicher was self-styled 'Jew-baiter Number One'. He was born in 1885 in a Bavarian village, the son of an elementary school teacher, which he was to become himself. He served throughout the First World War, being commissioned, and awarded the Iron Cross, first class. He returned to teach at Nuremberg but his life thenceforth was almost wholly taken up with anti-semitic propaganda and politics. He founded and led a small anti-semitic party which, after he met Hitler in 1921, merged with the Nazi Party. He took part in the Munich *putsch*, was arrested and dismissed from his teaching post (though perhaps for indecent behaviour). He was elected to the Bavarian legislature in 1924 and to the Reichstag in 1933, being appointed Gauleiter of Franconia in 1925. His importance, however, was as editor and proprietor of *Der Stürmer*, the principal anti-semitic paper in Germany, and as a rabble-rousing anti-semitic orator. Notorious for his personal corruption even within the Nazi movement, he was retired as Gauleiter in 1940 after a Nazi commission had found him guilty of misappropriating confiscated Jewish property. Hitler allowed him to live out the war on his farm. True to his anti-semitic obsessions even at Nuremberg, he declared 'this trial is a triumph of world Jewry'. He was indicted on counts 1 and 4, convicted on count 4, and hanged.

Streicher in the dock at Nuremberg; older, but no less aggressive: death



Central Press



Sado-Opera Mundi

Von Schirach: twenty years

Schacht: acquitted

Baldur von Schirach was head of the Hitler Youth and later Gauleiter of Vienna. He was born in Berlin in 1907 into a wealthy and aristocratic family. His father, an officer of the Guard Cuirassier Regiment, later became director of the Court Theatre at Weimar, where he grew up. His mother was American, of ancestry which included two signatories of the Declaration of Independence. Schirach was educated at a progressive private boarding school and went on to study at Munich University. He became a force in student politics, and having already joined the Nazi party and the SA was elected leader of the Nazi German Students League in 1929. He became known to Hitler, who in 1931 appointed him head of the Youth Organisation, which included command of the Hitler Youth. In 1933, on his accession to power, Hitler appointed him Reich Youth Leader. He promoted, enthusiastically and sometimes violently, the policy of *Gleichshaltung* in his own field and by 1936 had brought all German youth organisations, including the religious movements and the Boy Scouts, under his control. He served as an infantryman in France in 1940 and was subsequently appointed Gauleiter and governor of Vienna, regarded as a trouble spot by the Nazis, with the task of breaking opposition to Nazi and German control. He held this post throughout the war and was implicated both in the deportation of Viennese Jews and in the execution of arbitrary justice within his Gau. The youngest defendant, father of four, would-be poet, he had preserved something of his idealism, aristocratic manner, and youthful good looks. He was indicted on counts 1 and 4, convicted on count 4, and sentenced to 20 years.

Albert Speer was Reich Minister for Armaments and War Production. He was born in 1905. His father and grandfather had been successful architects and he followed them into the profession. He qualified at the Universities of Berlin and Munich, then taught at the Berlin technical college and eventually set up in private practice. He joined the Nazi Party in 1932, came to the notice of Hitler and was appointed his personal architect in 1934. Among the commissions he received from him were those for the New Reich Chancellery at Berlin and the Party Palace at Nuremberg. In 1942 Hitler named Speer as head of the Todt Organisation, which undertook state construction work, and added to his responsibility the Ministry of Armaments and War Production. Although only 36 and inexperienced, Speer proved to possess truly remarkable powers of organisation. Despite the increasing weight of air attack on German industry, he was able to increase the output of essentials throughout 1943 and the first half of 1944. Towards the end of the war, when he had realised that Hitler intended to bring Germany down with him, Speer took measures to preserve German industry from deliberate destruction and even contemplated engineering Hitler's death. He was deterred by his discovery that the German people still believed in Hitler as in no one else. He did not disguise his disenchantment, but Hitler, who respected him in a way he did none of his other servants, subjected him to no penalties. He was indicted on all four counts, convicted on 3 and 4, and sentenced to 20 years. He was released in 1965.

Central Press



Albert Speer, Minister for Armament and War Production: 20 years

Walter Emanuel Funk was Reich Minister for the Economy and President of the Reichsbank. He was born in 1890 in Königsberg, East Prussia, into a merchant family. Studied at Berlin University, was invalided from the army in 1916 and worked as a journalist on several Berlin papers. In 1922 he was appointed editor of the *Berliner Börsenzeitung*, a financial paper, and became a distinguished financial journalist but, according to his own testimony, decided in 1931 'that the (Nazi) party would come to power . . . and felt called upon to make my own political and economic opinions heard in the party'. He resigned his editorship, joined the party, sat in the *Reichstag* (July 1932–February 1933), and wrote economic policy papers for the party, advocating heavy state investment of a 'New Deal' type. Appointed party press chief in January 1933, he held the office of State Secretary in the Ministry of Propaganda from March 1933 until 1937, when he succeeded Schacht as Reich Minister for the Economy and, in 1939, as President of the Reichsbank and Plenipotentiary General for the Economy. He claimed that, as these offices were subordinate to Göring's Delegation for the Four Year Plan, he was not an independent agent. He was not, in fact, an important Nazi leader, though undoubtedly implicated in the execution of Nazi aggressive policies. He was indicted on all four charges, convicted on counts 2, 3 and 4, and sentenced to life imprisonment.



Hulton Picture Library

Walter Funk, President of the Reichsbank: life imprisonment

Wilhelm Frick was Reich Minister of the Interior and Reichs Protector (Governor) of Bohemia-Moravia (occupied Czechoslovakia). A senior civil servant of the Weimar Republic, he had become attracted to the Nazi Party in its earliest days and had used his position as deputy chief of the Munich police to protect Hitler from arrest. He took part in the 1923 *putsch* and was tried with Hitler for high treason. Elected nevertheless to the *Reichstag* in 1924, he led the party there and became the first Nazi to hold public office as Thuringian Minister of the Interior in 1929. He was one of the only two Nazis appointed to Hitler's first cabinet, filling the key office of Minister of the Interior. He was responsible for drafting and implementing much of the legislation which brought all organs of German government under Nazi control, for the abolition of the trade unions, and for the groundwork of the anti-semitic Nuremberg Decrees. Appointed Protector of Bohemia-Moravia, he acquiesced freely in Himmler's programme of terror and extermination in that territory. He had by that time, however, passed into obscurity. His usefulness to Hitler had been as 'a good administrator who knew thoroughly the machinery and the mentality of the German Civil Service' when Hitler was still feeling his way into power. He declined to testify at Nuremberg, adopting the attitude that all he had done was to implement the will of a constitutionally elected government. He was indicted on all four counts, convicted on counts 2, 3, and 4, and hanged.

Wilhelm Frick, Minister of the Interior: death



Keystone

Hans Fritzsche was chief of the Radio Section of Goebbels' propaganda Ministry. He was born in 1900 in Westphalia, son of a civil servant. Educated at high school and university, his studies were interrupted by war service. Afterwards he became a journalist and in 1933 was head of the German state radio news service. On its incorporation into the Propaganda Ministry, he joined the Nazi Party. He was promoted head of the Press division in 1938, and in 1942, having served briefly on the Russian front, he became head of the Radio division. Well-known as a broadcaster, he occasionally deputised for Goebbels at ministerial conferences. It was as a substitute for Goebbels, in a sense, that he was arraigned at Nuremberg, being indicted on counts 1, 3, and 4, and was convicted of none.



Hans Fritzsche, Nazi broadcasting chief: acquitted

Karl Dönitz was Grand Admiral, Commander-in-Chief of the German navy, and Hitler's successor. He was born in 1891 in Berlin, joining the navy as a cadet in 1910, and being commissioned in 1913. He served from 1914-16 in a cruiser and from 1916-18 in U-boats. Between the wars held a variety of sea-going and shore commands. Re-appointed to the U-boat service on its reconstitution in 1935, he was promoted to its commander in 1936. He succeeded Raeder as Commander-in-Chief of the navy in 1943, combining the post with command of the U-boat fleet. After Göring's and Himmler's fall from favour in April 1945 he was nominated by Hitler to succeed him as head of state, and arranged the surrender of Germany to the Allies. He insisted throughout the trial that his career had been solely that of a professional naval officer, a submission which the tribunal went some way towards accepting. He was indicted on counts 1, 2, and 3, convicted on counts 2 and 3, and sentenced to 10 years.

Admiral Dönitz, C-in-C of the Kriegsmarine: 10 years



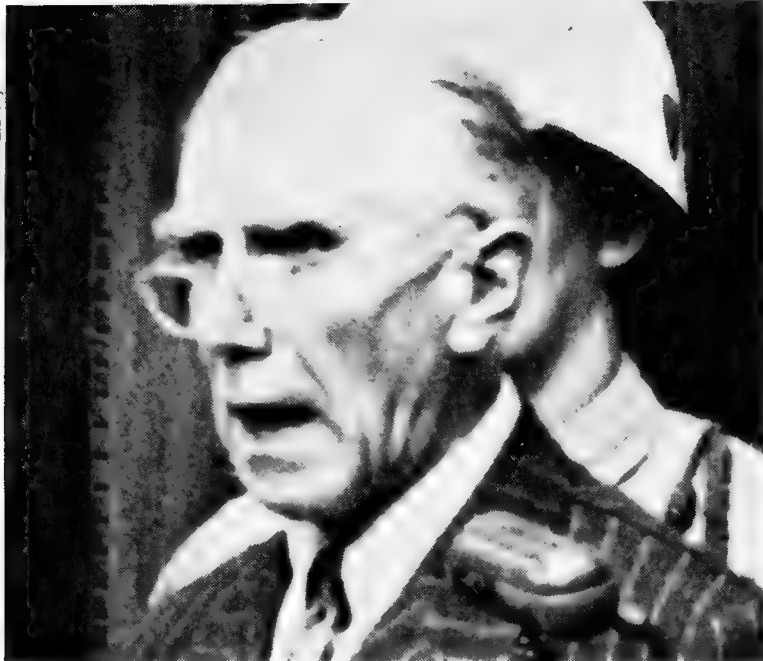
Admiral Raeder: life imprisonment

Erich Raeder was a Grand Admiral and preceded Dönitz in command of the German navy. He was born in 1876 in Wandsbek, near Hamburg, joined the Navy as a cadet in 1894, and was commissioned in 1897. Held a variety of shore and sea-going appointments throughout the war and under the Weimar Republic. Appointed Chief of the Naval Staff with cabinet membership in 1928 and, by Hitler, Commander-in-Chief in 1935. He oversaw the expansion and rearmament of the German navy and directed its operations until 1943 when, at his own request, he surrendered command to Dönitz. He was indicted on counts 1, 2, and 3, convicted, and sentenced to life imprisonment.



Colonel-General Jodl, Chief of Operations Staff: death

Alfred Jodl was a colonel-general, chief of the Operations Section, High Command of the Armed Forces, and Hitler's personal operations officer. He was born in 1890 in Bavaria, into a traditionally military family. Commissioned into the artillery in 1910 he served throughout the First World War. He was appointed Chief of the National Defence Section of the General Staff (war plans) in 1935 and Chief of the Operations Section in the new OKW in 1938 and held that post throughout the war. His chief tasks were to inform Hitler of military situations as they developed and to transmit his orders to the operational commands. OKW was not itself a command staff, but it was the one with which Hitler was in most frequent and intimate touch and Jodl came eventually to act as Hitler's principal military adviser, since Keitel lacked the courage to disagree with him. Like Keitel, Jodl pleaded 'soldier's obedience' to excuse his complicity in Hitler's acts. Clever and colourless, he was the archetype of the German staff officer. He was indicted on all four counts, convicted on all four and hanged.



Franz von Papen, former German Chancellor: acquitted

Franz von Papen was Reich Chancellor June-December 1932, and Vice-Chancellor in Hitler's first cabinet. He was born in 1879 into a Prussian land-owning family and commissioned as a cavalry officer in 1897. He served as military attaché in Washington, 1913-15, where he probably organised a sabotage ring, and thereafter as a staff officer in Palestine. In 1919 he retired to his estates and in 1921 won election to the Prussian legislature as a Centre Party candidate. His importance in the history of Nazi Germany stems from his involvement in the overthrow of Brüning's government, the last moderate administration of the Weimar Republic, and from Hindenburg's attempts to use him as a moderating influence on Hitler. He was appointed Chancellor by Hindenburg to replace Brüning in 1932, dissolved the *Reichstag* in order to bring Nazi representatives into the new government, but then fell out with Hitler and had to dissolve the *Reichstag* once more. After these elections Schleicher became Chancellor, but Papen was now reconciled with Hitler and intrigued with him to bring Schleicher down. When the next elections gave Hitler the largest share of seats, Hindenburg decided to name him Chancellor but designated Papen as Vice-Chancellor, in the hope that he would moderate Nazi policies. Papen, however, was no match for Hitler and was quickly forced from office, narrowly escaping execution in the Röhm Purge after making a speech condemning Nazi excesses. He occupied a succession of diplomatic posts thereafter, including that of Minister to Austria, where he had a hand in preparing the *Anschluss*, and in 1945 was serving as Ambassador to Turkey. His real faults were those of vanity, pride, and poor judgement. He was acquitted by the Nuremberg tribunal but served two years of a nine-year sentence imposed by a German court in 1947. He was indicted on counts 1 and 2.

Von Neurath, protector of Bohemia and Moravia: 15 years



Constantin von Neurath was Foreign Minister 1932-38 and Reichs Protector of Bohemia and Moravia (occupied Czechoslovakia) 1939-41. He was born in 1873 in Württemberg into a family of officials and officers. Educated at Tübingen and Berlin, he joined the German foreign service in 1901 and was attached to the London Embassy from 1903-14. He served in a grenadier regiment in 1914, won the Iron Cross, First Class, was wounded, and returned to diplomatic duty. He resigned in 1916 in disagreement over policy and acted as head of the King of Württemberg's cabinet until 1918. Rejoined the foreign office and served as Minister to Denmark 1919-21, Ambassador to Italy, 1921-30, and to Great Britain, 1930-32. Appointed Foreign Minister in von Papen's government that year he held this post in the cabinets of von Schleicher and Hitler until 1938. He resigned, according to his own testimony, in disapproval of Hitler's plans for aggressive war, retaining the title, nevertheless, of Minister without Portfolio and accepting the governorship of occupied Czechoslovakia in 1939. He administered this office with insufficient harshness for Hitler's taste and finally abandoned his post in 1941. The tribunal accepted that he had intervened to mitigate the activities of the Gestapo and SD in Czechoslovakia. He was indicted on all four counts, convicted on all four, and sentenced to 15 years.



Field-Marshal Keitel, German Commander-in-Chief: death

Wilhelm Keitel was a Field-Marshal and Chief of the High Command of the Armed Forces (OKW). He was born in 1882 in Prussia. He was commissioned into the artillery in 1901 and served through the First World War, first as a battery officer, then on the staff. A major-general in 1934, he was serving as chief-of-staff to the Minister of War in 1938 and, on Hitler's abolition of that office after the Blomberg/Fritzsche crisis, became head of the unified defence staff which was set up to replace it (OKW). He held this post throughout the war. It involved constant attendance on Hitler and he was therefore privy to all his major strategic decisions, besides being responsible for their transmission to the operational commands. Towards the end, when Hitler had taken the day-to-day management of operations into his own hands, he acted as his principal military adviser. In practice his age made his advice of little use (he was known in the army as *Lakaitel* – 'lackey') and Hitler depended more on Jodl. He inevitably pleaded the doctrine of 'soldier's obedience' to justify his transmission of criminal orders. He was indicted on all four counts, convicted on all four and hanged.

Dr Ernst Kaltenbrunner was Heydrich's successor as head of the Reich Main Security Office, 1943-45. He was born in 1903 at Braunau, Austria, the son of a lawyer. He grew up and went to school in Linz and read law at Graz University, qualifying as a lawyer in 1928. In 1932 he joined the Austrian Nazi Party and in 1933 the SS, becoming leader of the Austrian branch in 1935. He had worked for the amalgamation of Austria with Germany (*Anschluss*) since the early 1920's, had a hand in its realisation, and was afterwards appointed Austrian Minister of Security. When that post was abolished in 1941 he became Higher SS and Police Leader for Austria and in 1943 was chosen by Himmler to succeed the assassinated Heydrich as Head of the RSHA. That organisation controlled, among its many branches the Gestapo, the Security Service, the extermination squads, and the concentration camps. Kaltenbrunner attempted to argue that he was responsible only for its intelligence and counter-espionage functions and ignorant of all else, but the weight of evidence of his criminal involvement was overwhelming. He was indicted on counts 1, 3, and 4, convicted on 3 and 4, and hanged.



Ernst Kaltenbrunner, Chief of the Security Police: death

Hans Frank was the party's legal expert and later Governor-General of Poland. He was born in 1900 at Karlsruhe, Baden. He qualified as a lawyer in 1926 and set up practice in Munich. Since 1919, however, he had been active in right-wing politics; he joined the SA in 1923 and became a full member of the party in 1927. Thereafter he worked almost exclusively for the party, acting as head of its disciplinary board, and he was appointed *Reichsleiter* for legal affairs in 1931. In 1930 he had been elected to the *Reichstag* and in 1933 he was appointed by Hitler Bavarian Minister of Justice. When that office was abolished, he was made Reich Minister without Portfolio and President of the Academy of German Law, which prepared much of Nazi legislation. The reason for his arraignment, however, was his conduct as Governor-General of occupied Poland, an office he held continuously from 1939 to 1945 and used to inflict terrible suffering and deprivation on the Polish people and state. He confessed at the trial to a 'terrible guilt' and maintained this attitude in private. He had, apparently quite genuinely, undergone a religious re-conversion. He attempted like other defendants, nevertheless, to shift responsibility for crimes committed in his domain to the SS. He was indicted on counts 1, 3, and 4, convicted on 3 and 4 and hanged. He was author of perhaps the most memorable epitaph of the Nazi régime: 'A thousand years shall pass and the guilt of Germany shall not be erased'.



Hans Frank, brutal governor of Poland: death

Ernst Sauckel was chief of forced labour recruitment. He was born in 1894 near Bamberg, son of a postman. After a brief schooling he became a merchant seaman and sailed the world in clipper ships. Interned by the French at the beginning of the First World War, he became a factory hand in Schweinfurt at its end. Married in 1923, his wife was to bear him 10 children. He joined the Nazi party in the same year, and was appointed Gauleiter of Thuringia in 1925. He was elected to the provincial assembly in 1927 and to the *Reichstag* in 1933. His importance dates from his appointment as Plenipotentiary General for the Allocation of Labour in 1942. Between that moment and the liberation of the German occupied territories at the end of 1944, he was responsible for the deportation of some 5,000,000 people from their homes to Germany, of whom he frankly stated in 1944 that 'not even 200,000 came voluntarily'. He had laid down, moreover, that the principle to be followed in the treatment of the deportees was 'to exploit them to the highest possible extent at the lowest conceivable degree of expenditure'. He maintained in the dock that as a former seaman and worker he had the strongest fellow feeling for all working people and could not therefore be guilty of crimes against them. He was indicted on all four counts, convicted on 3 and 4, and hanged.

[For John Keegan's biography, see Vol 5, p. 1913.]

Ernst Sauckel, organiser of foreign slave labour: death



...absentees from Nuremberg

ADOLPH EICHMANN: Intensive study of Jewish life and Zionism during the prewar years made Eichmann the Nazi Party's expert on all things Jewish. He was to put this knowledge to all too successful use as the man responsible for the rounding up of Jews, their transportation to the concentration camps, and their eventual destruction. In this way he made himself responsible for the death of nearly 6,000,000 Jews. Simon Wiesenthal reconstructed how this most wanted of the war criminals got away. At the end of the war he had been interned, unidentified, in an American camp. He gave his rank, but changed his name to Echmann (although he revealed his real name to a German worker in the camp). He was transferred to another camp, and just as his true identity was discovered by the Americans, he escaped. He hid in Northern Germany and, aided by the Nazi underground, later escaped to South America



Adolph Eichmann who organised the logistics of the 'final solution'



Franz Stangl was decorated by the Nazis for 'psychological discomfort'

FRANZ STANGL: Commandant of the Treblinka concentration camp near Warsaw, Stangl was responsible for the extermination of nearly 700,000 people. Of this number, the total sent to the camp, only 40 survivors remained when the camp was demolished. The Nazi authorities thought it wise to destroy the evidence of Treblinka, by demolishing the camp, and at the same time they thought fit to try to remove possible witnesses, the SS guards, by sending them to fight the partisans in Yugoslavia. Among these was Franz Stangl, who survived the war, and in 1945 returned to his wife and family in Austria. He was arrested by the Americans on account of his rank in the SS, who were still ignorant of his role in the Treblinka camp. When his career was uncovered he was sent to Linz to await trial by the Austrian courts. At this stage the Allies were still ignorant of his full past, and when he escaped from a working party, he was not considered important enough to inform the Austrian authorities



The ODESSA pipe-line in action. Eichmann, behind the rudimentary disguise of dark glasses (centre), bound for Argentina with two ODESSA agents

ODESSA: This organisation, whose title stands for *Organisation der SS Angehörigen*, or Organisation for SS Members, was set up in 1947 to aid wanted SS men to escape from justice and in some cases from prison. It started under the noses of the Allies as a 'charitable institution', and it provided high-ranking Nazis in hiding with the contacts they needed to plan escapes. They built up an elaborate system of couriers, and even used US Army trucks, driven by sympathetic German civilians, to carry escaping SS men. Their main escape routes were from Bremen to Rome, and from Bremen to Genoa. From Rome and Genoa the routes led to Spain, certain Arab countries, and South America. All this cost much money,

and the story of where this came from is perhaps the most fascinating aspect of the whole organisation. In 1944 a secret meeting of Germany's leading industrialists took place in Strasburg. Hitler and the Gestapo knew nothing of it, and as the whole meeting was based on the certainty of Germany's defeat, this was just as well. The decision was taken to set up business enterprises abroad, and get money out of Germany, safe from Allied confiscation. Much of this money was later used to finance escapes, procure defence counsel for war criminals, and secure positions abroad for wanted Nazi men. ODESSA was large, successful, well prepared beforehand, and very efficiently run



Martin Bormann escaped from Berlin in 1945 and has never been traced

MARTIN BORMANN: As Hitler's deputy, Bormann was in a position to plan his escape from Germany at the end of the war, and to lay hands on sufficient funds to carry it out. On the night of May 1, 1945 he left the Reich Chancellery in Berlin with Naumann, Axmann, Stumpfegger, a driver, and several others. They hoped to reach Dönitz's headquarters in Flensburg, by breaking through the Russian circle of armour behind a screen of German tanks. Bormann, according to Axmann, was dressed in the uniform of an SS general. When the lead tank of the screen was knocked out, the party retreated to the Friedrichstrasse station and then along the tracks toward Lehrter station. On the tracks they passed some Russian soldiers who, perhaps taking them for a Volkssturm unit, ignored them. From here on Bormann's story becomes tangled. Axmann testified to having seen him dead, or seemingly dead, spreadeagled on the ground, but Simon Wiesenthal, who has devoted his life since the war to the tracing of missing Nazi war criminals, offers this possibility. Bormann changed from his general's uniform, passed through the Russian lines as described, and bribed an ambulance driver to carry him across the Austrian border. From here he sought sanctuary in a monastery in the Italian South Tyrol, and it is assumed that from there he escaped to South America. The driver, a man named Holt, has stated that his passenger told him that he had guided Bormann to safety, and would receive a monthly cheque for his continued silence. Bormann has never been certainly traced or identified

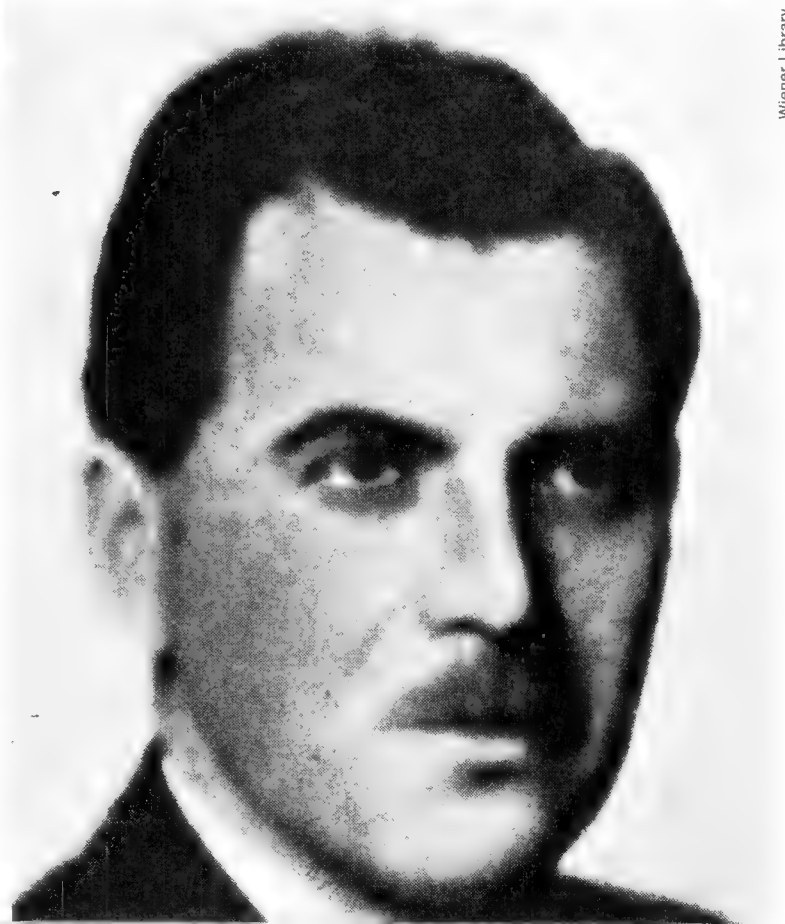
KARL BABOR: Camp doctor of Gross-Rosen concentration camp, Babor, like Mengele, was an expert with the Phenolic syringe. There were no gas ovens at Gross-Rosen. He took care always to administer slightly more than the lethal dose—'just to make sure'. After the war he was interned by the Allies, but as one of the 'small fry' who had 'done nothing serious', he was released. He resumed his studies in Vienna and qualified as a doctor. Former inmates of Gross-Rosen tracked him down, and he fled to Africa



Karl Babor, the 'selection committee' for new arrivals at Gross-Rosen

JOSEF MENGELE: Chief doctor at Auschwitz concentration camp, Mengele was responsible for unnumbered operations, experiments, and deaths. The hospital at Auschwitz was the scene of many operations, often without anaesthetics, aimed at experiments in sterilisation. There were many other operations without the smallest scientific excuse. Patients were injected with phenolic acid, air, petrol, or water, solely in order to kill them. Mengele had a vaccine of his own, intended to change brown eyes to blue, with which many victims were injected with fatal results. He is known to have stabbed a girl to death with a bayonet and thrown a child into a fire. Amazingly, when the war ended, Mengele was at liberty to return to his home (the Americans having no dossier on him as yet), where he remained undisturbed for five years. When his past began to catch up with him he escaped to South America

Josef Mengele, doctor in whose hands many inmates of Auschwitz died



The Legality of Trials



Keystone

War Crimes and Tribunals It was clear that after the war some sort of trial for those who were responsible for its outbreak and its atrocities was needed, though this had not proved necessary after the First World War. Thus, those whose task it was to draw up the code under which the trials were to be administered had no precedents to guide them. When the Nuremberg Trials were organised after the war, the Americans were hard-pressed to find lawyers and jurists to try the cases, due to a general feeling in legal circles that the concept of 'war crimes' had no validity in international law. Telford Taylor, who was one of the leading US figures at the trials, here outlines the legal background that enabled the trials to take place. *△The judges announce the verdicts at Nuremberg*

On October 25, 1941, in separate but simultaneous declarations, Winston Churchill and Franklin D. Roosevelt denounced the executions of hostages in France and other German-occupied countries. Interestingly, both used the word 'retribution' in prophesying the consequences of these atrocities, but the United States was not yet at war; and so it was Churchill alone who announced that 'Retribution for these crimes must henceforward take its place among the major purposes of the war.'

What Churchill meant by 'retribution' he did not say. Soon, however, other voices spoke more explicitly, and these were the voices of the governments-in-exile in London. Representatives of these nine governments established an 'Inter-Allied Conference on the Punishment of War Crimes' which on January 13 1942, promulgated what became known as the 'Declaration of St James'. After making reference to the 'régime of terror' instituted by Germany in their several countries, the signatories expressly repudiated the idea that the perpetrators of these atrocities could adequately be dealt with 'by acts of vengeance on the part of the general public'. On the contrary, it was declared that 'the sense of justice of the civilised world' required that the signatory powers 'place among their principal war aims the punishment, through the channels of organised justice, of those guilty of or responsible for these crimes'.

Both before and after the war crimes trials it was urged by some that the right medicine for the Nazi leaders was summary execution after a 'drumhead court-martial', or even with no semblance of a trial. Surely it is noteworthy that no such thoughts occurred to the representatives of the occupied countries, when they outlined the concepts on which the trials were to be based. Plainly it was a matter of the greatest moment to them that the acts of the German conquerors be regarded as 'crimes', and that those accused of their commission be 'handed over to justice and judged'.

But on what basis could these atrocities, terrible as they appeared, be treated as 'crimes'? What and where was *the law* by which the accused might be 'judged'?

The Declaration of St James itself answered the question insofar as it made reference to 'international law, and in particular the Convention signed at The Hague in 1907 regarding the laws and customs of land warfare'. The 'laws of war', however their specific content might be determined, did in fact constitute the legal basis of nearly all of the war crimes trials, in both Europe and the Far East.

The root ideas of the laws of war, some of considerable antiquity, fall in two principal categories. The first is the concept of 'honour', derived largely from knightly chivalry, of which modern examples include the prohibition of various deceptions, such as the use of the enemy's uniforms or battle flags and insignia, and the requirement that war be not launched without fair warning by formal declaration.

The second and perhaps more pragmatic concept is the mitigation of the ravages of war by prohibiting unnecessary cruelties; more precisely, practices which spread misery and which are not reasonably related to the conduct of hostilities. The seeds of such a principle must be nearly coeval with the birth of moral sensibility, and ancient literature abounds with condemnations of pillage and massacre.

With the formalisation of military structure in the 18th century came the establishment of courts-martial, empowered to try not only ordinary offences, but violations of the laws of war as well. A notable trial of this description was that of Henry Wirz, the Confederate commandant of a prisoner-of-war camp at Andersonville in Georgia, who was tried and executed in 1865 for the brutal mistreatment of Union prisoners. And in the wake of the American Civil War, the Crimean War, and the Franco-Prussian War, there arose, in Europe and America, a tide of sentiment for the codification of the laws of war and their embodiment in international agreements.

The four great Conventions

The principal fruits of that movement were the series of treaties known today as the Hague and Geneva Conventions. For present purposes the most significant of these are the Third and Fourth Hague Conventions of 1907 and the Geneva Prisoner of War and Red Cross Conventions of 1929.

The Third Hague Convention relates to the 'opening of hostilities' and requires 'previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war'. Broader and much more important is the Fourth Convention 'respecting the laws and customs of wars on land'. An annex to the Convention, consisting of 56 articles, sets forth various requirements and limitations with respect to the conduct of hostilities, the treatment of prisoners of war, and the exercise of authority over the occupied territory of a hostile state. Rules for the treatment of prisoners and for the relief of the sick and wounded are prescribed in much greater detail in the Geneva Prisoners of War and Red Cross Conventions of 1929.

These treaties were not intended to embody a comprehensive codification of the laws of war; indeed, the Preamble to the Fourth Hague Convention expressly recognises its partial character, and declares that 'until a more complete code of the laws of war has been issued . . . the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilised peoples, from the laws of humanity, and the dictates of the public conscience'. In this connection, it is noteworthy that naval warfare is not dealt with by any general treaty comparable to the Fourth Hague Convention on land warfare. However, the Ninth Hague Convention forbids naval bombardment of 'undefended' ports, and the London Naval Treaty of 1930 condemned submarine sinkings of merchant vessels, unless passengers and crews were first placed in 'safety'.

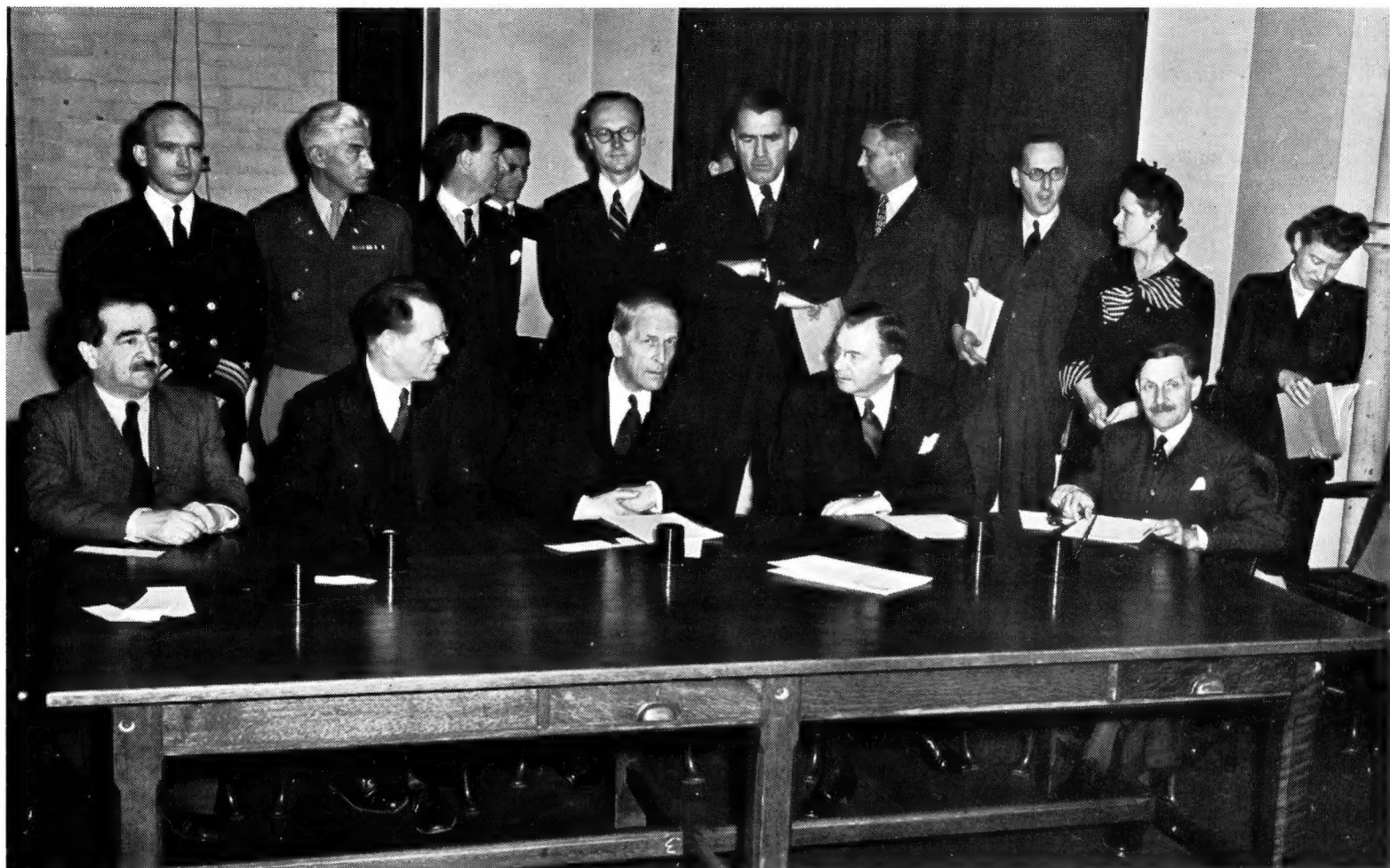
None of these treaties relating to the laws of war specified means for their enforcement, or penalties for their violation. Their requirements, however, have been extensively embodied in the domestic military law of many countries, and applied by courts martial. At the end of the Boer War, for example, the surrender terms referred to 'certain acts contrary to the usages of war' which were to be 'tried by court martial immediately after the close of hostilities'. The problem of war crimes loomed large in the peace negotiations after the First World War as well. In the upshot the defeated Germans were allowed to try their own war criminals, and the Leipzig trials of 1921-22 proved a fiasco in that only a handful were convicted, and of these several were allowed to escape their very inadequate prison sentences. As a conceptual matter, however, the German Supreme Court affirmed that violations of the laws of war are punishable offences, and in the *Llandovery Castle* case sentenced two German submarine officers to four years' imprisonment for complicity in the torpedoing of a British hospital ship and firing on and sinking some of the lifeboats.

A few months after promulgating the St James Declaration, the signatory governments-in-exile sought the support of the principal Allied nations. They were successful; in August 1942 President Roosevelt declared that it was among the war aims of the United States that, both in Europe and Asia, the 'invaders' should 'have to stand in courts of law . . . and answer for their acts'. These sentiments were echoed by Winston Churchill a few weeks later, and in October the Soviet government declared that the perpetrators should



Popperfoto

Henry Stimson, responsible for broadening the definition of 'War Crimes'



Representatives of the Allied countries, who reached the agreement that formed the basis for bringing the Axis war criminals to trial

be 'handed over to judicial courts', including a 'special international tribunal' for the leaders of 'Fascist Germany'.

A year later, in the fall of 1943, Roosevelt and Churchill met with Stalin in Tehran and issued a declaration that, as a part of any armistice with Germany, those individuals responsible for atrocities in the occupied countries would be 'judged and punished according to the laws of those liberated countries', while those 'major criminals whose offences have no particular geographical location' would be 'punished by a joint decision of the governments of the Allies'. At about the same time the Allied governments (excepting the Soviet Union, whose participation foundered on the issue of individual representation for each of the Soviet republics) joined in establishing, in London, the United Nations War Crimes Commission, the main functions of which were to serve as a repository for evidence concerning war crimes, to make lists of individuals accused of that commission, and to make plans for the apprehension and trial of those accused.

During the latter part of 1944, as the eventual defeat of the Axis powers appeared certain, the handling of war crimes charges became the subject of intense consideration at the highest governmental levels of the major Allied powers. President Roosevelt designated Judge Samuel Rosenman as his personal representative for the purpose, and in the spring of 1945 the subject was canvassed in Parliament and at the San Francisco Conference at which the United Nations Organisation was born, in negotiations involving the representatives of Britain, France, the Soviet Union, and the United States.

Largely through the influence of Roosevelt's Secretary of War, Henry L. Stimson, and of Justice Robert H. Jackson, designated in May 1945 by President Truman as the United States Representative and Chief of Counsel for the prosecution of war crimes, the conceptual dimensions of 'war crimes' were broadened so as to encompass not only the traditional laws of war, but also the medieval concept of 'just' and 'unjust' wars, projected as a condemnation of 'aggressive war' as a crime under international law.

The eventual consequences of these discussions were the great international trials held at Nuremberg and at Tokyo from 1945 to 1949. The first Nuremberg trial (1945-46) was held under the authority of the London Agreement of August 8, 1945, signed by the representatives of the four powers occupying Germany (Britain, France, the Soviet Union, and the United States) 'acting in the

interests of all the United Nations'. The Agreement embodied the Charter of an International Military Tribunal, and vested it with jurisdiction to try three categories of offences.

'Crimes against peace' (planning or waging 'a war of aggression, or a war in violation of international treaties').

'War crimes' (violations of the laws or customs of war).

'Crimes against humanity' (inhuman treatment of civilians and persecutions on racial or religious grounds).

With slight modifications these provisions were later incorporated in Control Council Law No 10, promulgated by the four zonal commanders constituting the Control Council for occupied Germany on December 20, 1945, and this law furnished the jurisdictional basis for 12 Nuremberg trials held from 1946 to 1949. With other insignificant modifications, the definitions of the three types of crimes were also to be found in the Charter of the International Military Tribunal for the Far East, established in Tokyo under the authority of the 11-member (Australia, Canada, China, France, Great Britain, India, Netherlands, New Zealand, Philippines, Soviet Union, and United States) Far Eastern Commission.

Because of their international composition, the prestige of the bench and bar, and the notoriety of the accused (Hermann Göring, Alfred Krupp, and Hideki Tojo, among many other leading figures of wartime Germany and Japan), the Nuremberg and Tokyo trials have become symbolic of the entire war crimes process. In fact, however, they were but a small part of a very large picture. Only 199 individuals were tried in the 13 Nuremberg proceedings, and 25 in the single Tokyo trial. Precise figures are lacking, but by March 1, 1948 some 3,500 individuals had been tried on war crimes charges in European countries other than the Soviet Union, and 2,800 in the Far East, taking account of neither the Soviet Union nor China. It would be a conservative estimate that 10,000 individuals were tried on such charges from 1945 to 1950, and during the last few years hundreds more have been, and still are being, tried before West German tribunals.

The great bulk of these individuals were tried before national, civil, or military tribunals of the United States, Great Britain, and the nations occupied by Germany or Japan during the war. With minor exceptions, these trials were only concerned with violations of the laws of war, and for the most part the charges related either to the mistreatment of prisoners of war, or of the civilian populations of the occupied countries.

This plethora of trials and tribunals has led to some confusion of terminology. The phrase 'war crimes trials' has come to signify all the criminal proceedings described above, whereas 'war crimes' in its narrower sense means violations of the laws of war, as contrasted with the other two offences, 'crimes against peace' and 'crimes against humanity'. In fact the legal bases of the three offences are quite distinct.

Disagreement about the legitimacy of the war crimes trials stems largely from disputes, of long standing, about the nature of 'law'. Positivist jurisprudence draws a sharp distinction between law and morals, and recognises as law only those rules, preordained by state authority, that have the direct and immediate backing of organised force.



Keystone

Supreme Justice Jackson, chief prosecutor at Nuremberg

Since there is no supra-national sovereignty, with a legislature or court capable of declaring binding rules of international conduct and laying down penalties for their violation, the positivists have tended to scoff at the notion of international law. The concept of 'crimes against peace', much more than that of 'war crimes', invites such criticism, since there had never been any prosecutions for such an offence prior to the Second World War. Indeed, after the First World War an Allied Commission concluded that the initiation of an aggressive war, while morally reprehensible, 'may not be considered an act directly contrary to positive law.' During the years between the wars, several treaties, including especially the Kellogg-Briand Pact of 1928, condemned war as an instrument of national policy. Did these treaties make it a crime to launch a war of aggression? In 1944 the United Nations War Crimes Commission found itself about equally divided and unable to take action on the matter.

Secretary Stimson, Justice Jackson, and their colleagues were more sanguine. 'Aggression is an offence, and we all know it; we have known it for a generation', wrote the former, while the latter called for 'a firmer enforcement of the laws of international conduct, so as to make war less attractive'. And so, principally on the urging of the United States representatives, the concept of 'crimes against peace' was embodied in the jurisdiction and the judgements of the Nuremberg and Tokyo tribunals.

From a juridical standpoint this has remained the most controversial feature of the trials. In terms of the punishments imposed, however, crimes against peace played a very minor role at Nuremberg, for with the exception of one defendant (Rudolf Hess, sentenced to life imprisonment), all those convicted of crimes against peace were also convicted of offences against the laws of war. Of the Tokyo defendants, 15 were found guilty only of crimes against peace, but none of these was given a capital sentence.

As shown earlier, there was abundant and, for most lawyers, sufficient precedent to furnish a sound legal basis for the great bulk of war crimes charges, based as they were on violation of the laws of war. For the positivist, the weakness of those laws lies in their fluidity. As the preamble to the Fourth Hague Convention declares, they are intended to 'diminish the evils of war, as far as military requirements permit'.

'Military requirements' change with developments in the art of warfare. After the First World War it still seemed reasonable to require submarines to give warning before sinking merchantmen, so that the crews might take to the boats. But such a rule could not survive the advent of radar, sonar, and long-range aircraft, which in combination made it virtual suicide for an attacking submarine to surface. During the war American as well as German submarines disregarded the requirements of the London Naval Treaty of 1930, and for that reason the Nuremberg tribunal dismissed the charges against Admirals Raeder and Dönitz based on 'unrestricted sub-

marine warfare'. Efforts to codify the laws of war relating to the conduct of hostilities inevitably labour under difficulties of this type.

'Crimes against humanity' is a muddy concept. Insofar as the victims of 'inhumane acts' and 'persecutions' are the inhabitants of occupied countries, ordinarily their mistreatment will be violation of the laws of war—a 'war crime' in the narrow sense—and in this most common context the expression 'crime against humanity' is redundant and superfluous.

But what of a government's persecution of its own nationals, such as that of German Jews by Hitler's government? Since there is no 'war' involved, there is no 'war crime', and in this setting the 'crime against humanity' has independent meaning. In 1915 the French, British, and Russian governments denounced the Turkish massacres of Armenians (who were of Turkish nationality) as 'crimes against humanity'. However, none of the Nuremberg or other trials gave a clear answer to the question whether a government's mistreatment of its own nationals can be regarded as an offence under international law, and no defendant was convicted on such a basis. Today such problems are the province of the European Court of Human Rights at Strasbourg.

Because of its magnitude and the incredible mass atrocities which accompanied it, the Second World War led to war crimes trials on a scale quite without precedent. But except for the charges at Nuremberg and Tokyo involving crimes against peace, there was nothing unprecedented about the offences ascribed to the accused, or the use of judicial tribunals to determine the issues of guilt or innocence.

Apart from their legal basis, there were, of course, other features of the trials that aroused misgivings, and laid the basis for what appears to be endless argumentation. One of the most notable such features is the problem of 'superior orders'. Is it fair to condemn a man for what he has done under the compulsion of a military order, or a decree of a tyrannical dictatorship?

To be sure, the point pinches much less sharply if it appears, as it often did in fact, that the accused acted not unwillingly and from fear, but enthusiastically and approvingly. However that may be, the problem is neither new nor peculiar to war crimes cases. The ordinary criminal law has long wrestled with the question of the extent, if any, to which duress or fear may be allowed to justify conduct otherwise criminal. In the military field the issue is as old as the laws of war themselves, and almost universally it has been ruled that, if the accused was aware that the order called for the commission of a criminal act, his obedience is criminally punishable, and the order is to be considered only in mitigation, and not as a defence. Such was the case in Germany where, at least since 1872, the military penal code has provided that the accused is responsible 'if he was aware that the order involved an act the commission of which constituted a general or military crime'.

Some people still say that the 'top Nazis' should have been executed without trial, but there is no satisfactory answer to the question how those on whom this summary vengeance was to be visited, should have been selected. No doubt everyone would have named Göring and Ribbentrop, but thereafter disagreement would have at once set in. Of the 199 tried at Nuremberg, 38 were acquitted and only 21 were executed. As yet mankind has devised no better means than a trial to determine whether accusations are well-founded.

The lack of neutral judges has been criticised, but in 1945 there were few real neutrals, and it is unlikely that any of them would have welcomed involvement. A more serious defect was the limitation of the tribunals' jurisdiction to 'Axis' and 'Far Eastern' war criminals; surely a permanent international court with general penal jurisdiction would have been preferable, but in 1945 there was no such court, nor is there one today.

The issues surrounding the war crimes trials are numerous and complex; discussion and criticism of what was done should be welcomed by all who hope for a continuing development of international law. But those disposed only to find fault should ponder the alternatives. The fate of Benito Mussolini and Clara Petacci, lynched and strung up by the heels in Milan, is a sharp reminder of how the war crimes question would have been answered had there been no trials. But what should have been done instead is a problem generally ignored by those who condemn what was done in fact.



TELFORD TAYLOR was educated at Williams College and Harvard University. He held various governmental legal positions between 1932-40. He served with the US army in Europe between 1942-46, when he became Chief Counsel and Representative of the United States for the Prosecution of War Crimes. Since 1952 he has been a civilian lawyer and lecturer at Yale and Columbia Universities. He became a Professor in 1963 and is the author of numerous books and articles, such as *Sword and Swastika*, *The March of Conquest*, and *The Breaking Wave*.

Letters

For the First World War . . .

Dear Sir,
The letter which I read in your editorial about the printing of a 'History of the First World War' is probably the best letter ever written. I think it would be a superb idea, especially so if it would be to the same high standard as your 'History of the Second World War'. Please, please let's have a First World War.
Yours etc,
A. K. Sierz

Dear Sir,
With regard to Mr R. W. Jones's letter in Volume 7 No. 16 of 'History of the Second World War', he says about the suggestion concerning the World War One publication 'the younger element might not be so keen'.

I am 14 years old and I am extremely interested in reading about the First World War, as are many of my friends at school.
Please do not give up all idea of publishing a History of the First World War as it would add something to the present publication — the 'History of the Second World War' — and be a first-class companion series.
Yours etc,
P. Boswell,
Northampton

Dear Sir,
I have just read the letter sent to you by R. W. Jones of Gillingham (Issue 16 Volume 7) in which he said 'to go back fifty years to when my father was a small boy seems ludicrous'. I am sorry Mr Jones, but I think this is not true because I would be much more interested in what happened in that war in which so many more men, young and old, were killed on each side, than in Korea.

In my own view I think this war was the start of an extremely complex and decisive form of warfare. It was, I think, the first war in which chemical gas was used as a weapon, which alone killed many thousands of fighting men. It was the first war fought in the air, and very effectively at that, considering that the first engine-powered flying machine was flown by Orville Wright in December 1903. You may think 12 years is a long time for fighting planes to come into service, but if you consider that Wright's plane was only a powered glider with an old tomato tin as a carburettor, I think it was terrific. The First World War was also the first war in which tanks were used, and if it had not been for the tank, some battles might not have been won. The tank killed many men, but many men were also killed inside them in worse ways than the men on the outside of the machine.

Mr Editor, I have bought all the present issues and binders and, like many other people, I am very pleased and proud to own this publication. I am very pleased with the way you have made this history and will be delighted if you publish a 'History of the First World War', and not one on the Korean War.
Yours etc,
N. Grant,
Tynemouth

Dear Sir,
Obviously most people sending in their opinions on a History of the First World War or the Korean War will be biased. While acknowledging an appalling personal ignorance of the true facts about the Korean War, I feel

I must vote in favour of the First World War.
There is an immense need for a complete, accurate, and minutely detailed history of this 'Great War' which did so much to shape all our lives and is a vital link in world history — political, social and military history.

I think it should also be borne in mind when the decision is made that eyewitnesses of The Great War are unfortunately, but inevitably, becoming fewer with each passing year. Surely the Korean War can wait?
Yours etc,
T. Wise,
Littlebourne

Editor's reply

Many readers have written emphasising their interest in the technological aspects of the First World War. The huge impetus given to aviation is just one of these.

. . . and against

Dear Sir,
With reference to the various requests from other readers about the suggestion for a series about the First World War etc.

Since it has been considered that the first modern war was the Crimean (also the first I believe when photographs were taken) why not have a series about the major wars since that date? The Crimean War, American Civil War, Franco-Prussian War, South African Wars, The Great War, Korean War, and Vietnam.

From those, readers could make their own comparisons and study the progress of men and equipment.
Yours etc,
B. Mace,
London, N.1.

Dear Sir,
I support Mr R. W. Jones. I would rather read about military events which happened after I was born (1948) than before. What about Palestine, Malaya, Korea (Allied and Red View), French Indo-China, Suez, Cyprus (1956 and now), Algeria, Cuba, Aden, Yemen, the Arab-Israeli War (1967), Vietnam, and others. Also NATO, CENTO, SEATO, and the Warsaw Pact, the build-up of the world's armed forces after and since the war.

Your articles on the whole have been absolutely marvellous. You have printed every one thoroughly and I hope that whatever you print in the future will be as first class as in the past.

I hope other readers have the same views as I do.
Yours etc,
A. Maitland,
Edinburgh

Editor's reply

As Mr Mace and Mr Maitland point out there is a plethora of wars, both in the recent and distant past, admirably suited to treatment as magazine partworks. The difficulty of the more distant wars is the lack of photographic material, and the complete absence of colour photographs. The difficulty of more recent wars, on the other hand, is the abundance of photographic material, making selection difficult, and the mass of written documentation, much of it as yet unavailable to historians.

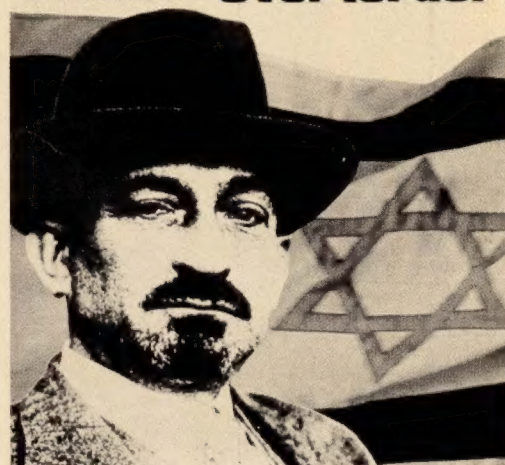
Omission:

The article 'Life in Japan' by Gwen Terasaki in Volume 8 No 1, was taken from her book *Bridge to the Sun*, published by Michael Joseph Ltd. in 1958.

Next week

HISTORY OF THE
**SECOND
WORLD
WAR**

**Struggle
Over Israel**



The Tokyo Trials

The trial of the Japanese leaders and their followers in Tokyo in 1945 caused a stir, not only because of the charges, but also because of the way the trial was organised. It was widely felt that these trials rested on even shakier legal ground than those at Nuremberg, and that the defence was handicapped by inadequate facilities.

The Middle East

Britain's declining power left a vacuum in the Middle East, which a number of interests were only too anxious to fill. Arab and Jewish nationalism both vied for power, and the British, with obligations to both, were unable to maintain peace.

Israel

Zionism was given an immense impetus by the sufferings of European Jewry under the Nazis. Enormous world sympathy for the idea of a Jewish state in the Holy Land was evoked, and small concern was shown for the Arabs, whom such a state would dispossess.

Collaboration

Europe immediately after the war was the scene of a series of purges as the occupied countries avenged themselves on those who had done well out of the German occupation. Many innocent people suffered and many private and political feuds were settled behind the screen of this unjust, but natural outbreak.



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